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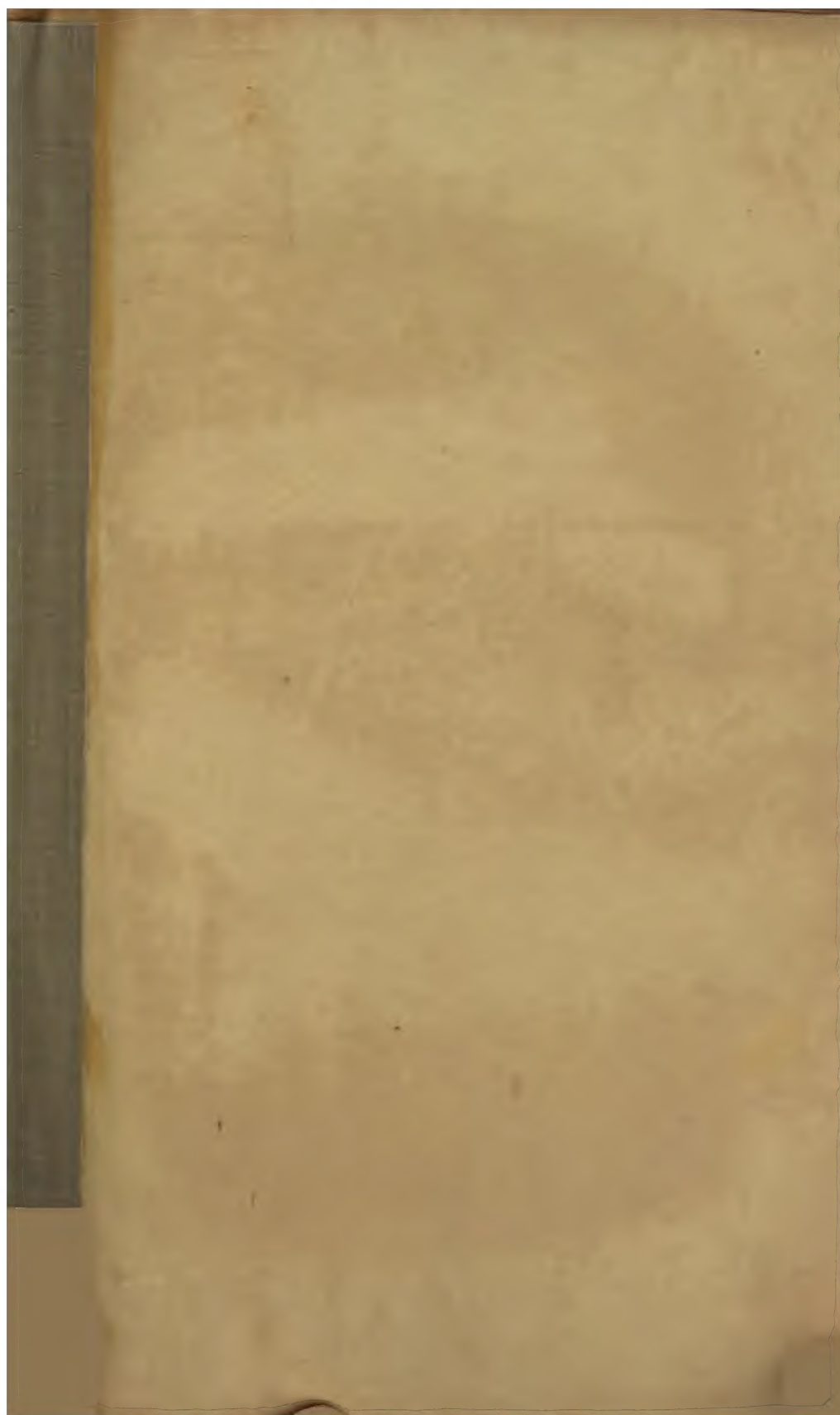
habit of delivering dissenting opinions on ordinary occasions weakens the authority of the Court, and is of no public benefit. It is no small proof of my good nature, that I have yielded in this instance, for since my return I have read pretty fully on the subject, and am more and more convinced that my original opinion was right.

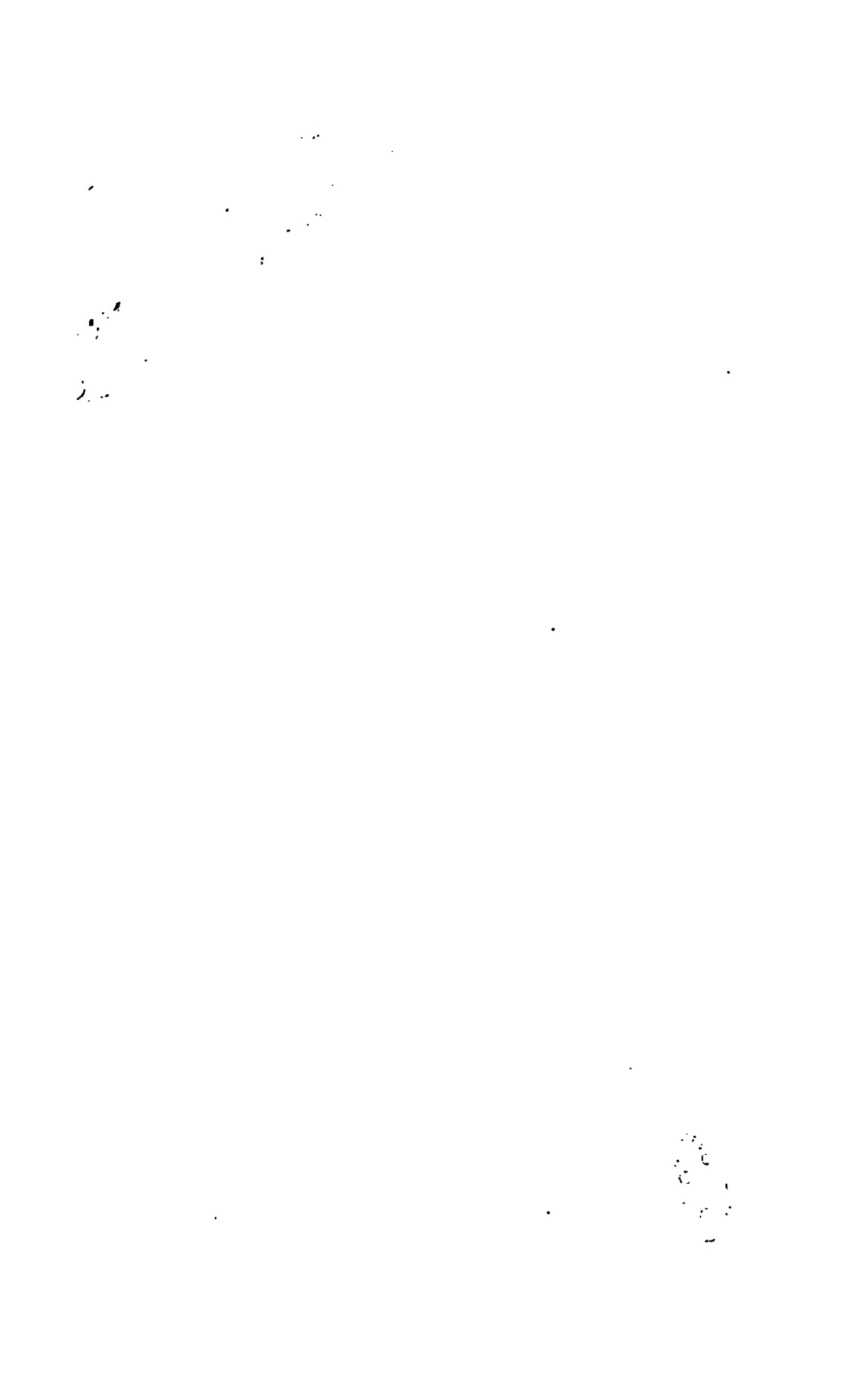
I do not remember that there were many cases decided, which would admit of annotation to an extensive degree, but in *Robinson v. Campbell* there might be a note on the point, in what cases title in a third person may be given in evidence, and in *Evans v. Eaton* the cases on patents might be collected and analyzed. If I can be of any use to you on these heads, I am always at your service. My family, however, has been quite sick since my return, and my little invalid daughter has been very severely ill, but is now convalescent. If she should continue better, I shall have leisure to write the notes on these points; but, perhaps, to be sure, you had better prepare them yourself. Gallison's Reports will give you several cases on patent rights, and I have some others in manuscript. . . .

Your very obliged and affectionate friend,

JOSEPH STORY.

The case of *United States v. Bevans*, (3 Wheaton's R. 336) alluded to in this letter, was founded on an indictment for murder committed by the defendant on board the ship *Independence*, while lying in the harbor of New York. The question which came before the Court was, whether the jurisdiction of the United States was, whether the case was within the jurisdiction of the Courts of the United States or the State Courts. It was held that the jurisdiction of the United States was, and that the Court was to pass on the case, giving to the Court the right to pass on such







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*Joseph Story*

*Author of the Commentaries on the Constitution of the United States*

ROBSON

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# LIFE AND LETTERS

OF

## JOSEPH STORY,

ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES,  
AND DANE PROFESSOR OF LAW AT HARVARD UNIVERSITY.

EDITED BY HIS SON,

WILLIAM W. STORY.

"And thou art worthy; full of power  
As gentle; liberal-minded, great,  
Consistent; wearing all that weight  
Of learning lightly as a flower."

*John Payne Smith*  
VOLUME I.

LONDON:

JOHN CHAPMAN, 142 STRAND.

1851.

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TO

MY MOTHER,

SARAH WALDO STORY,

THESE memorials of my father I dedicate to you. Of our home group, that lived in the sunshine of his familiar presence, you and I alone are left; and love, gratitude, the losses we in common have sustained, and the happy memories of the past which bind us so closely together, conspire to make the inscription of these pages to you, at once most appropriate in itself and most grateful to my feelings. Your sympathy has lightened my labor and cheered me in my progress; and however others may look upon this work, in your eyes I know that it will seem well done. To you, therefore, I bring it with the loving regards of an affectionate son.

W. W. STORY.





## PREFACE.

THIS is an attempt by a son to record the life of his father. I wish, on its very threshold, to avow this relation, and to ask every one to bear it in mind as he reads these pages. I do not profess to have been uninfluenced by those personal feelings which were natural to such a relation, and had I thought it necessary to exclude them from my mind, I should feel that the office I have now undertaken properly belonged to some other person. I have striven to be honest, but to be cold was beyond my wishes, as it was beyond my power. No one ever came within the sphere of my father's influence without feeling an enthusiasm for his character and an admiration for his powers; and in my own case, I willingly admit that love may have lent "a precious seeing to the eye."

I would return my sincerest thanks to all my father's friends and correspondents, who have placed his letters at my disposal, and particularly to those who have furnished me with the pleasant reminiscences of him which adorn this book, and who in other ways have given me "aid and comfort." Their expressions of kindness and interest have encouraged me in my task, and their assistance has been as valuable as it was willingly given.

Many important materials, particularly letters, of which I am unaware, may still exist, and I beg thus publicly to say to any correspondents or friends of my father, who

may be in possession of letters or other matter of importance or interest, that I shall esteem it a favor if they will be kind enough to enable me to make use of them in the event of a second edition of this book. Among his pupils at the Law School, I cannot doubt that there are many who might furnish me with personal reminiscences and notes of his lectures, which would be peculiarly valuable; if they would do so, they would confer upon me a great obligation.

From the large body of correspondence submitted to me, I have made such selections as seemed truly to indicate my father's character and opinions, excluding those which were immaterial and those which, written with an overtaken and wearied mind, and in the intervals of severe labor, were rather the expressions of momentary impulse and feeling than of settled conviction.

In presenting this work to the public, I feel an unfeigned diffidence. I know how much is justly required; and I feel that it might have been better done by other hands; but I have the consolation of knowing, that in undertaking it, I have followed out the wishes of my father, as expressed in a letter to a friend, who had written a biography of his parents, in which he says:—"Such parents as yours deserved such affection and admiration and reverence. I know not what I should envy so much, if envy could ever mingle with such feelings, as to have such a filial tribute in such a form."

BOSTON, October 1st, 1851.

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## LIFE AND LETTERS.

*John Pascoe Parkman*  
*Dec<sup>r</sup> / Hoboken / 1857.*

### CHAPTER I.

#### PARENTAGE.

AUTOBIOGRAPHICAL LETTER OF MY FATHER—HIS FATHER—MARRIAGE—CHARACTER AND PERSONAL APPEARANCE—RELIGIOUS VIEWS—ANECDOTES—HIS MOTHER—HER PERSONAL APPEARANCE AND CHARACTER.

AN autobiographical letter, written by my father in the year 1831, and addressed to me, thus commences with an account of his parentage:—

“Washington, 23d January, 1831.

“MY DEAR SON:

“I have often resolved to write down for your use a brief memoir of my life; and having leisure at this time, I have determined not to omit it any longer. You are too young now to think much about it; but if you should live, and grow up to manhood, as I pray God you may, I am sure that it cannot fail to be of interest to you. I shall write, too, very frankly and freely, and in a manner which would not be justifiable if this were designed for the public, or even for the eyes of a friend. But between a parent and child all forms may be dropped, and we may write as we feel; and if here and there a spice of personal vanity should appear, it would be but as the small talk of the fireside, where mutual confidence allows us to *think* aloud, and tell our honest thoughts as they

arise. Perhaps, when I am in my grave you will take comfort in these little details, and say, with the poet, — *Forsan et hæc olim meminisse juvabit.*

“I was born at Marblehead, in the county of Essex, on the 18th of September 1779. My father's name was Elisha Story; my mother's, Mehitable Pedrick. My father was a native of Boston, and born in 1743. He was the son of William Story of that place, who held, I believe, the office of Registrar in the Court of Admiralty at the beginning of the Revolution. My grandfather was, in fact, a Whig, but holding office under the British government, he was subjected to the common odium of the times. His house was assailed by the mob, and considerably injured. My father was a sturdy Whig, and took a very early and active part in all the revolutionary movements. He was one of the Indians who helped to destroy the tea in the famous Boston exploit. He did not receive a public education, owing, I believe, to his father's very rigid religious opinions, which would not suffer him to go to Harvard College, lest he should there imbibe those heretical tenets, which, in the form of Arminianism, were then supposed to haunt those venerable shades. He, however, was educated in the Public Latin School in Boston, then under the government of the celebrated master Lovell. After receiving the usual classical instruction there, he studied medicine with a very eminent physician, Dr. Sprague, of Boston. He married for his first wife, Miss Ruth Ruddock, daughter of John Ruddock, Esq., a man who had accumulated a considerable property in the ship-building business in Boston. She died in the year 1777, leaving seven children. In the autumn of 1778, my father married Miss Pedrick, whom you know as your grandmother still living, and by her had eleven children, of whom I am the eldest. Your grandmother's father was an opulent merchant of Marblehead, and, indeed, for that day, a very opulent merchant. He inclined, as many men of property did, to the Tory side, but never took any step except



in favor of his countrymen. A considerable portion of his property being in shipping, was lost by rotting at the wharves during the war. He died in the year after I was born; and finding that like himself I was left-handed, he was extremely anxious to give me a proof of his regard by presenting me with a small messuage; but my mother, with great good sense, for the purpose of avoiding all family disagreements, declined the offer; and thus I was probably saved from the mischievous notion, that I had property in my own right, a notion with which servants are apt to fill young minds to their positive injury."

Mr. Pedrick was a man of enterprise and decision of character, and as his daughter expressed herself, "he had no fear of any thing that the Almighty ever put on this earth." She used often to speak with pride of the courage he showed on one occasion when a fire broke out in Marblehead, during which he exposed his life to extreme dangers to save the property and lives of the family; and on another occasion, during the winter season, when, although he could not swim, he sprang into the water, which was filled with broken ice, to save the life of a child not in any manner related to him or known by him. This energy and self-reliance formed, as we shall see, a striking trait of his daughter's character, and was transmitted also to my father.

"My father," continues the Autobiography, "soon after the commencement of the revolution, entered the army as a surgeon, and continued in it until the close of the year 1777, when he retired, being disgusted with the management or rather mismanagement of the medical department. I am told that there is still extant a correspondence with the head of that department on the subject, somewhat excited, but I have never seen it. He was with General Washington

during the campaign of 1777 in the Jerseys; and I remember to have heard him speak, in my early youth, with great enthusiasm on the subject. To the very close of his life he entertained the highest admiration of General Washington, and of John Adams, though in the political controversies between the latter and Mr. Jefferson, he took side with Mr. Jefferson. He was, in a just sense, a disciple of the school of Washington, a lover of the Union, and devotedly attached to a republican government. In the party divisions of the times succeeding Washington's administration, he was a very decided republican, and continued so to his death. But his natural moderation of character, combined as it was with great firmness and amenity, saved him from those extravagancies, which but too often disgrace the history of parties.

"And now that I am upon the subject of my father, I must indulge myself in a few remarks upon his character and person. He was not so tall as I am, and rather of a stronger and fuller build. He must have been an uncommonly handsome man in his youth, (and indeed so I have always heard); for when I first recollect him with distinctness, though then quite bald, his face was still of great masculine beauty and attractiveness. His eyes were blue and of singular vivacity and sweetness, his eyebrows regularly arched, and a fine nose, and an expressive mouth, gave a perfect harmony to his features. There was, too, a slight smile which occasionally played about his features, and a general cheerfulness and ease in his conversation, which won every person who came near him. His manners were bland and approaching to elegance; modest, but at the same time with a conscious bearing of character; and there was just enough of the pride of person about him to make him solicitous to dress well, but not in showy apparel — with neatness, and yet not with too scrupulous care. My father was not a man of genius, but of plain, practical sense, and a quick insight into the deeds of men. He possessed great natural tact and sagacity with little pretension to learning. As a physician, he was eminently suc-



cessful in practice, as was established by the constant increase of his business to the very time of his decease. In one branch of it he was eminent, perhaps more so than any individual in the neighboring towns. I mean in obstetrics. In cases of this sort he was often sent for into the neighboring towns, and I remember that on several occasions, Dr. Holyoke, then very eminent in the same branch, was in the habit of requiring his presence and assistance in difficult cases."

In the year 1770, Dr. Story removed from Boston, where he was born and had lived to that time, to Marblehead, and on this occasion he received the following certificate from the principal physicians of the former place:—

"To all whom it may concern, this is to certify, that Dr. Elisha Story was born and educated in this town, until he had attained a good knowledge of the Latin tongue; that he then served two years with Dr. E. Mather, a physician of note, at Lyme in Connecticut, and then returning to Boston was four years longer under the instruction of the well known Dr. John Sprague; that, since the completion of such period, he has for six years past practised with reputation in the common diseases of this climate, and the smallpox by inoculation and the natural way; that he is well skilled in midwifery, and has attended or performed in most of common operations of surgery; and this, our brother, being about to depart from our healthy metropolis, much more plentifully furnished with practitioners than some of the best of them are with patients, we recommend as a gentleman of abilities and integrity in his profession, an assiduous asserter of the rights of his country, and a friend to mankind.

SILVESTER GARDNER.

JOSEPH GARDNER.

JOHN SPRAGUE.

THOMAS YOUNG.

BENJAMIN CHURCH.

Boston, September, 1770.

"But," continues the Autobiography, "what I delight to dwell on with most sincere satisfaction, is my father's domestic character. He was one of the most amiable men I ever knew; kind and indulgent to his children, partaking of all their pleasures, and busy in promoting their innocent amusements. His home was full of cheerfulness. No one came there who did not receive a hearty welcome; no one departed without feeling as if leaving a home. He was liberal, charitable, and full of sympathy for the poor and afflicted. There was so much of gentleness about him, that his children felt him to be more of a companion than of a parent. His temper was very uniform, and almost an unclouded sunshine. I do not remember more than once in my whole life that he was angry with me. I have forgotten the occasion, but I know that I was quite in the wrong. I have heard him often say that his temper was naturally hasty and irascible; but that he had by perseverance and attention obtained the mastery over it. And he gave me very strong advice with parental tenderness to acquire a like mastery by the same method. I hope I have profited by that advice. I am sure that his recommendation was founded in a just observation of our power over ourselves."

The same statement he here makes as to his father's original hastiness and irritability of temper, I have often heard him make in regard to himself, saying that he was wont when a boy to give way to violent bursts of passion, which led to serious and affectionate expostulation from his father. This tendency was, however, afterwards so completely subdued, or rather so admirably directed, that it only gave glow to his enthusiasm and activity to his powers. During my whole life, I never once saw him in a passion, even under the most trying circumstances, and I never heard him speak an angry or wounding word.



"I remember," proceeds the Autobiography, "that on Thanksgiving, Christmas, and New Year, my father was in the habit of joining in all the merriment and sports of his children. On some of those occasions he usually played blind-man's-buff with us, and he was really the most adroit of all the company in escaping detection. The last time he ever played with us in this manner, he could not have been far from fifty-five years of age; and upon the close of it, he said, in a manner which affected us all nearly to tears: 'My children, this is the last time I shall ever play with you in this game.' The remark struck us dumb; and for a few minutes we were wrapt in melancholy.

"My father was a religious man, liberal and charitable in all his views. He was an Arminian in principle. My uncle, who was the minister of the church to which he belonged, was a warm, and indeed, over-zealous Calvinist. Between him and my father there were often disputes on the points of their faith, but these occasioned no alienation. One of the earliest impressions that I have, is of a conversation in which he spoke with great kindness and charity of the Roman Catholics, among whom he said there were many pious and excellent men. I was too young at the time to know who Roman Catholics were or what was their creed. But toleration of Popery was at that time almost a deadly sin among the good old Calvinistic Puritans, and I honored his opinion the more, because it formed such a contrast to that of others who were about him. I trace back to this source my early and constant hatred of religious persecution, and my love, my inextinguishable love of freedom of opinion and inquiry in matters of religion. They have now become the guiding maxims of my life. My father was for the last fifteen years of his life accustomed to have family prayers in the morning and evening. On Sunday, after the public afternoon service was over, all the family, including the servants, were assembled in one room, and he then read a printed sermon of some English divine, and concluded the day with reading a portion



of the New Testament, and with prayer. I still remember those meetings with great pleasure. My father read with remarkable clearness and propriety, and it was a treat to sit under him, while he gave us specimens of the best eloquence of popular divines. The flexible tones of his voice, the graceful modulation, the animated zeal, and the patriarchal simplicity of his utterance on those occasions, gave me a taste for serious reading and touching eloquence, which turned my thoughts even in youth to the sober realities of life. I am sure that I was greatly a gainer by those domestic services. And when in after life I read Burns's beautiful poem of the *Cotter's Saturday Night*, I felt, a thousand times, that it portrayed scenes familiar to my thoughts and dear to my recollections.

"I have many reasons to believe that I was somewhat of a favorite with my father from an early period. He gave me his confidence while I was yet a boy, and talked to me of his business and his situation in a manner belonging to persons of mature years and reflection. I was sensible of the value of this confidence, and retained it through his whole life. Peace to the memory of so good a man. It is still very dear to the aged inhabitants of my native town, among whom he enjoyed a singular and enviable respect and attachment. He was among them a general favorite, and often performed the truly important office of peacemaker, and restorer of broken friendships and family harmony."

Dr. Story seems to have had a temper which was genial and equable without being tame, a clear understanding, considerable sagacity, and great boldness and energy. He used to say that his mother condensed her opinion of him as a boy into the statement that, "he was a rogue, but an honest one." Some anecdotes illustrating his character may not here be without interest,

particularly as they also illustrate the character of the time.

He was, as my father has stated in his autobiography, and as I have frequently heard him say, one of that small band of sturdy revolutionists (about seventeen in number) who, in the year 1773, and during the excitement growing out of the duty imposed on all tea imported into the Colonies, disguised themselves as Indians, boarded the ships laden with that obnoxious article, which lay in the harbor of Boston, and threw overboard their whole cargoes, amounting to about three hundred and forty-two chests.

He was also one of the "Sons of Liberty," actively coöperating in all the counsels and measures of the various clubs, which were the crystallizing points of the revolutionary spirit in Massachusetts. He not only attended their secret meetings, but engaged in their most dangerous service. "In consequence of their active demonstrations during the year and while the British troops were quartered in Boston," says his daughter, Mrs. E. White, "the commander-in-chief stationed two brass field-pieces on the Common, within a short distance of the guard-house, for the purpose of overawing the inhabitants. The Sons of Liberty thereupon called a meeting, at which they resolved to attempt to carry off these cannon. Their plan was, to proceed to the Common at midnight, with a sufficient body of chosen men, two of whom were to advance, seize and gag the sentinels, and the others to assist in removing the cannon, in case the guard-house was not alarmed. My father was selected as the person to attack and disarm one of the sentinels, a duty which despite its danger and difficulty, he readily under-



took.<sup>1</sup> I have heard him say, that he marched alone from a particular spot on the Common, towards one sentinel, looking steadily at him, with his gun cocked, and when near enough to be heard, said, 'If you make the least noise, or give the slightest alarm you are a dead man;' that he never saw a man so frightened,—the soldier shook from head to foot, not daring to make the least resistance or to sound an alarm; that after disarming and gagging him, he gave a loud whistle, which was the preconcerted signal to his companions, who at once came to him from their places of concealment, and assisted him to bind the sentinel to a tree. He then whispered to the prisoner, that if he attempted to raise the guard he would instantly be shot down; and this was the only word spoken by any of the party. The poor fellow, however, remained perfectly quiet, while the party dragged away the cannon without being disturbed, and, if I remember aright, took them over the neck and there hid them.

"I have heard my father say, that he was at the examination and court martial of the sentinels the next day, and that the sentinel with whom he dealt declared, upon oath, that all at once he was surrounded, overpowered, disarmed, and gagged by a large number of persons who looked like devils, and seemed as if they must have come up from under the earth; that he endeavored to discharge his gun and give an alarm, but was prevented by the numbers of persons by whom he was surrounded. My father said that the soldier gave his testimony so bravely and boldly, not supposing that there could be any person present aware of his cowardice and of the

<sup>1</sup> Mr. Oliver, of Roxbury, was the person who attacked the other sentinel, I believe.

actual facts, that it was nearly impossible for him to restrain himself from laughing and even from contradicting him."

These two cannon played a distinguished part in the Revolution, and were the same, afterwards described by the Secretary of War in a representation to Congress as "two brass cannon, which constituted one moiety of the field artillery with which the late war was commenced on the part of America, and were constantly in service during the war," and upon which he was directed to affix a suitable inscription. On one of them, therefore, was inscribed, "The Hancock, sacred to Liberty;" on the other, (which was the cannon taken by Dr. Story) "The Adams." They are now deposited in the Bunker Hill Monument, at Charlestown.

Before the revolution, and at the period when the English were in the habit of forcibly impressing seamen, wherever they could find them, a man named Michael Corbett was engaged on board an American vessel, at the port of Boston, laden with salt. On the morning when the vessel was to sail, an English lieutenant came on board in search of seamen to impress, and having found Corbett below and half covered with salt, in which he had hidden himself to avoid discovery, ordered him, with insulting language, to come out. Corbett refused repeatedly, and finally, as he saw the lieutenant advance to seize him, drew a line in the salt before him, threatening to run the lieutenant through with his marline-spike if he came over the line. The lieutenant did, however, advance across the line, upon which Corbett, as good as his word, killed him instantly by running him through the body. Great uproar and confusion natur-



ally ensued. Corbett was carried ashore, tried, and through the influence of the English officers, condemned to death. The Americans, among whom the system of impressment had excited great indignation, took part with Corbett, and threatened to raze the jail and deliver him, if any attempt should be made to execute the sentence. Dr. Story was among the most indignant. He visited Corbett in disguise, and assured him of protection. He then went to the sheriff, represented the state of feeling in the town, prayed him to use his influence to prevent an attempt to enforce the sentence, and finally announced his determination in such event, to aid the people in their attempt to rescue Corbett even by the razing of the jail. His argument and representation, backed by the determined spirit of the people, had such effect that Corbett was finally liberated.

During the revolution, Dr. Story was attached to Col. Little's regiment as surgeon. But it was common in the Continental army for the surgeons, and even the chaplains, to act as soldiers, and in most of the battles occurring during his connection with the army, he was engaged. He fought at Concord and Lexington, pursuing the British troops at every step during their retreat to Charlestown, and was in the trenches as a volunteer at the battle of Bunker Hill, fighting beside his friend Warren during all the early part of the engagement, and until he was forced to abandon the duty of a soldier for that of a surgeon in removing and attending to the wounded.

Dr. Story's charities to the poor were large in proportion to his means. But his sympathy was not restricted to virtuous misfortune,—it extended to those whom

want tempted to crime. He recognized the fact, that seeming virtue is often only vice untempted, and that the heart which would be bounteous in the sunshine of prosperity is often stunted and debased by the mere savagery of need. One night he had occasion to go to his stable for his horse, when to his surprise he recognized a person whom he knew to be poor, standing in the hayloft and pitching out the wood piled there. Concealing himself, Dr. Story watched the man, and saw him carry off the wood without attempting to prevent the theft, alleging as a reason, that bitter need must have induced the act.

The final clause in his will is particularly interesting, as showing the estimation in which he held my father, and as containing a beautiful trait of his own character. It is as follows :—

“I request my executrix hereinafter mentioned not to distress the poor, who may owe me at my decease, but to receive their debts as they may be able to pay in ever so small a sum.

“I also make my wife *Mehitable Story* aforesaid my sole executrix of this my last will, knowing that she will receive advice and assistance from her son *Joseph*, to whom I recommend her and her concerns; and though this perhaps is needless, I do it to mark my special confidence in his affections, skill, and abilities.”

My father's mother was born in 1759, and at her marriage was only nineteen years of age. She was slight in her frame, but handsome and vivacious, of a vigorous constitution, very tenacious of purpose, and had in an eminent degree that tact and managing power in which women so much excel men. Born during the French war, her childhood and youth had been passed amid



those exciting scenes which preceded the American Revolution. She was married during the struggle for independence, at a time when the material prosperity of this country was at its lowest ebb, and the means of living were very narrow. Yet such was her spirit, that at nineteen years of age she was willing to assume the responsibility of a family of seven children upon an exceedingly restricted income. Her eldest child was my father, and it was during those revolutionary struggles which brought out like fire the secretest handwriting of character, kindling the enthusiasm and quickening the powers of all, that he was born. With her ardent temperament, it was impossible for her not to share in a lively manner the excitements of the day. This had doubtless not only great influence in strengthening her own character, but in modifying that of her child. But her interest in public affairs never interfered with the exact performance of all her domestic duties, and her home was always well ordered, neat, and cheerful. Her spirit seems not to have sunk under the cares of a growing family, but to have risen to the exigencies of her situation. Chiefly did her capacity exhibit itself after the death of her husband, which happened in the year 1805, when she was left with an exceedingly moderate income, and a large family of children solely dependent on her economy and foresight. And I have often heard my father describe the shifts to which she was put, and the admirable tact and method with which she conducted her household, and cared for the education of her children.

Dr. Story, in his last testament, speaks of her as "my beloved, faithful, and affectionate wife, (who) did during the whole time in which I have lived most happily with

her, take on her the charge and management of my children, whom I had by a former wife, and did conduct that trust reposed in her with great patience and prudence, which probably have few examples, and thereby left my mind free to prosecute my professional engagements."

Nor was the position of the mother of a large family at that time, in New England, an easy one. Food was dear, comforts scarce, and means stinted. The climate was bleak and trying, especially in Marblehead. The demands of charity were large. And the two ends of the year could only be made to meet with frugality and management. The mother of a family was forced not only to superintend, but actively to take part in the work. Domesticities were not to be had to any extent, and each housewife was bound to help herself. There was little time for leisure, much less for luxury. Things do not move on in a new country, where difficulties beset the path at every step, as in an old country, where the wheels of labor are fitted into the well-worn grooves of custom. In addition, the war encumbered not only the nation, but the individual, and comforts, and at times, even necessities, could not be commanded. A mother was, therefore, often forced to be at once servant, seamstress, housekeeper, schoolmistress, and lady. Her position corresponded to the Italian definition of beauty, "*il piu nell'uno*."

Strong self-reliance is apt to slide into dogmatism, and it is probable that my grandmother may have had somewhat of this failing. As I remember her in old age, she was like all brave natures, impatient of timidity or weakness of purpose. Her temper was gay, and she was a great talker, telling manifold stories of the Revolution,



and of the men and deeds of the past age. Her mind had a romantic turn, and with a sort of half-superstition she used to recount the legendary tales of her native town, never quite believing nor quite disbelieving them. Even to her death she took great interest in all the passing events of the day, and particularly in politics, which she read with avidity and strong personal feeling. She was impatient of being assisted,—preferring to do for herself,—loved to take the lead, was constantly busy, and never could believe that she was aged.

Such was the parentage of my father. And no one who knew him can fail to see how strongly the peculiar traits of both parents were stamped upon his nature. The friendly geniality and broad understanding of the father, forming the base of his character, which was heightened by the indomitable will, vigor, and enthusiasm of the mother.

## CHAPTER II.

### CHILDHOOD AND YOUTH.

PERCEPTIVE FACULTIES—INTEREST IN POLITICS—SCENES IN THE BARBER'S SHOP—HIS MISTAKE OF THE IDENTITY OF HIS MOTHER—THE AMBITION HE SHOWED IN HIS GAMES—HIS FIRST MILITARY EXPERIENCE—HIS STUDIOUSNESS—ANECDOTE OF HIS GENEROSITY AND COURAGE—HE GOES TO THE ACADEMY—HIS OPINION OF THE "ELEGANT EXTRACTS"—DILIGENCE AT SCHOOL—HIS ESTIMATE OF THE MIND AND CHARACTER OF WOMEN—DOMESTIC INFLUENCES—LIFE AT HOME—ANECDOTES OF BOYISH TRICKS—CONFIDENCE OF HIS FATHER IN HIM—RELIGIOUS INFLUENCES—ACCIDENT—INFLUENCES OF HIS NATIVE PLACE—DESCRIPTION OF MARBLEHEAD—ITS SUPERSTITIOUS CHARACTER—ECCENTRIC PERSONS—DIALECT OF MARBLEHEAD—ANECDOTES AND ILLUSTRATIONS OF IT—HE BEGINS TO WRITE VERSES—HIS RELIGIOUS VIEWS—PREPARATION FOR COLLEGE.

THE faculties first developed in a child are the perceptive. The human creature born into a new world is curious about it, has an outer existence in nature, probes its laws and phenomena, and asks questions which defy answer. He craves solution of this ever new miracle, and must satisfy his appetite for knowledge as he may with what husks we can give him. But there is great difference between children in the kind and amount of mind with which they seize upon the external world. The pageant passes without impression before the eyes of some; others "grapple to it with hooks of steel," and make it a portion of themselves. Some children are interested only in one subject or one

class of subjects, others even in childhood exhibit continuous powers of attention. The philosopher early introverts his curiosity. The mechanic begins early to build. The childish habits of distinguished men, when examined in the light of their after life never fail to be characteristic. There is no fact I have been able to discover in my father's childhood which does not naturally belong to the man.

He early exhibited quick and general powers of observation, was interested in all passing events, and had his senses in full activity. His brother, Mr. William Story, says, that his earliest recollection of my father was when he was between two and three years of age. At that time his favorite occupation was to sit on the front door-steps and watch the persons and occurrences in the streets, and he was always able to give a clear account of every thing that passed. As he grew up, this habit of observation and desire of knowledge increased, and he attracted the notice of those who knew him by the attention and interest he showed as a listener. Wherever there was a group of gentlemen engaged in conversation, he was sure to be at their side, listening with mouth and ears wide open. One of his favorite haunts was the barber's shop, which, as the gentlemen of the town daily frequented it in order to have their heads powdered according to the fashion of the time, became a sort of Exchange, where the politics of the day were warmly discussed, and the newspapers taken. Here, therefore, whenever he could slip away, he would betake himself, and having made friends with the barber by doing him many little offices, he was permitted to stay and listen to the news and the warm political dis-



cussions which there took place. And as the revolutionary war was then but just ended, there was necessarily in their conversation many reminiscences of the "battles, sieges, fortunes they had passed," and much that was thrilling to an enthusiastic boy. So deeply did these conversations sink into his mind and engross his thoughts, that they haunted his sleep and were recounted in his dreams, causing him sometimes to scream out with excitement, so as to awaken all who were near him. Often in later life he recurred to the hours spent in the barber's shop and pictured the debates and the stories he heard, and the customs and manners of the gentlemen of the old school, and the interest and delight mingled with a certain awe with which he used to listen. This handsome, florid boy, with long auburn ringlets, which curled down to his shoulders, and a face full of animation, could not fail to attract much notice, and frequently, at the instigation of the barber and the gentlemen, he would mount the table and declaim pieces he had committed to memory, and even at times would make prayers.

The testimony of his old acquaintances in Marblehead is uniform as to his curious craving for knowledge of every kind while he was a small boy. Without being intrusive, he was anxious to hear and understand all that passed, and was as devoted a listener as he afterwards became a talker, which is saying a good deal.

Mr. George Wilson, of Marblehead, says in a letter to me relating to him, —

"I have conversed with Mr. Hawkes and others who were acquainted with your father when young, and all describe

him as a generous, noble-hearted youth, full of life and high spirits. He was a man (to use their expression) when a boy, and always associated with those who were much older than himself. When quite a lad he frequented the barber's shop, where he could have an opportunity of entering into political disputes with gentlemen who were in the habit of meeting there in those days. Such were his powers of reasoning, even at that early period, that those who considered themselves well versed in the politics of the time, were often annoyed and vexed at the idea of being unable to answer or disprove what he advanced.

"Your grandfather, Dr. Story, often in conversation with his patients spoke of his son Joseph as being a remarkable child, exceedingly fond of books, and when reading or studying, though the room was thronged with company, the conversation or noise of those present did not interrupt or disturb him in the least.

"You may be assured that every son of Marblehead takes pride in acknowledging that Judge Story was his townsman. No man was ever more beloved and respected, no one ever more highly appreciated than your father by the inhabitants of this town."

The second marriage of his father gave rise to an odd circumstance, which he frequently related in after years with great glee. He always heard his half-brothers speak of their mother as being dead, and of his mother as being their step-mother, and being the eldest child of his father's second wife, and knowing them only as brothers, he was led to suppose, that what was true of them was true of him also, and that his own mother was only his step-mother. This natural mistake, was, of course, fostered by all his half-brothers, and much fun they made of it at his expense. At last, the jest spread, and he was



assailed constantly with questions as to how his mother looked, and when she died ; to all of which for some time he gave the gravest answers, describing his mother exactly as he had heard his half-brothers describe theirs, and relating the manner of her death. The jest was finally pushed so far that it was discovered. In later times he used to turn the tables on his mother, and when they were indulging together in reminiscences of the olden times, he would suddenly turn round and say, — " But you know you are not my own mother, after all."

As a boy he was ardent in his sports, and showed the same determination that afterwards characterized him. He never would take a subordinate part in the games at school, insisting either on being principal in every game where there was a head, or declining to join in it. An anecdote illustrating this peculiarity is well remembered in the family. While he was a young boy, his schoolmates formed a military company, and one of them proposed to him to take the part of lieutenant, but this he refused, insisting, that unless he could be captain, he would have nothing to do with the company. He was accordingly chosen captain, and on the first parade day, treated his tin-sword company at his father's house. This was his first and greatest military experience ; for although in early manhood he was induced to accept the commission of lieutenant in the militia service, he soon resigned, and it was ever after an unfailing source of jest to him and to his friends. He used jestingly to lament the loss his country had sustained by his resignation, and to pretend an offended pride, that his military genius was not recognized.

At this time, says his brother, "his disposition was

always kind and conciliating, his feelings tender and easily affected with any unkindness offered to others. He was a great lover of his books when very young, and if, at any time, dinner was not ready at the school hour, he would take a piece of bread in his hand, and run off with it to school, so as to be among the first." This ambition and love of study seem to have been greatly fostered by his mother, who was constantly stimulating him to be second to none, and never suffered his emulation to slumber. She herself says, that she used to say to him: "Now, Joe, I've sat up and tended you many a night when you were a child, and don't you dare not to be a great man."

That he was brave and generous as a boy, the following anecdote, told by his sister, will show: "When he was about eleven years of age, one of his schoolmates had done a cruel act, which came to the ears of the master in such a way as to implicate Joseph, who was entirely innocent, although he knew the actor. The master, therefore, sent for Joseph to examine him. But before he went he was besought by several of the girls not to divulge the name of the real offender, lest the latter should be expelled from the school in disgrace. Upon examination it appeared that Joseph was innocent, but that he knew who had committed the act, and he was ordered to tell his name. This he respectfully but decidedly refused to do, and in consequence received in the presence of all his schoolmates a severe flogging, to which he submitted without flinching." The Autobiography continues:—

"The establishment of an academy in the town was quite an era, and gave a new turn to my thoughts and occupa-



tions. I was among the earliest scholars that belonged to it, and began there to learn the rudiments of Latin and Greek. It was for a considerable time under the superintendence of the Rev. Mr. Harris, who was afterwards president of Columbia College in New York.<sup>1</sup> It was at this school that I first became acquainted with those admirable works,—Dr. Vicesimus Knox's *Elegant Extracts in Prose and Verse*—an epitome of which was daily used in the exercises, and the large works were occasionally resorted to. To this source I trace back my earliest knowledge of English literature, and my inextinguishable love of the writings of the great masters of that literature in former times. The public are almost overwhelmed by the inundation of school books in our day; but, notwithstanding our boasted improvements, there are not, in my opinion, any works so well adapted to cultivate a pure and elegant taste, and so full of elegant instruction as these. We are impatient of the old, forever on the search for the new, and therefore Knox's compilations are now scarcely known beyond the shelves of some library formed in other days, and are deemed too antiquated for the march of modern intellect."

For these books, which were the earliest literary friends of my father, he always entertained great regard. Whenever discussion arose in the family concerning any passage in one of the standard English authors, his invariable exclamation was: "Come, let us have the *Elegant Extracts*, I have no doubt we shall find it there." And if, in fact, he did find it, he would slap the book on its back, as if it

<sup>1</sup> But Mr. Harris, although he was the nominal head of the school, only attended to the department of elocution, all the rest of the studies being taught by Mr. Michael Walsh, of whom my father says in a letter to Mr. Everett,—*"My best classical instruction, such as it was, I principally owed to Mr. Michael Walsh, then usher in the academy, and author of the work on Mercantile Arithmetic."*



were an old familiar friend, and say, — “After all your new-fangled books, give me the *Elegant Extracts*.” His *Autobiography* continues, —

“At school I was diligent and ambitious. My natural temperament being cheerful, and my activity in athletic exercises great, I was generally among the foremost in our sports, and selected, if not for superior skill, at least for promptitude and strength.

“There is one circumstance connected with my studies at the Marblehead Academy, which has probably given a turn to my thoughts, which you may easily trace. Girls as well as boys went to the same school at the same hours, and were arranged on opposite sides of a large hall on their appropriate forms. In the simplicity of those days, it was not thought necessary to separate the sexes in their studies. Generally, we studied the same books, and as we recited our lessons in the presence of each other there was a mutual pride to do our best, and to gain an honest portion of flattery or of praise. I was early struck with the flexibility, activity, and power of the female mind. Girls of the same age were on an average of numbers quite our equals in their studies and acquirements, and had much greater quickness of perception and delicacy of feeling than the boys. Remaining thus at school with them until I was about fifteen years old, I could not be mistaken as to their powers; and I then imbibed the opinion, which I have never since changed, that their talents are generally equal to those of men, though there are shades of difference in the character of their minds resulting from several causes. My impression is, that the principal difference in intellectual power, which is marked in after days, results not so much from their original inferiority of mind, as from the fact that education stops with females almost at the time it effectively begins with men; and that neither their habits nor pursuits in life enable them afterwards to cultivate science or literature with much diligence or success. They have no professions which con-

stantly require and constantly encourage them to master new sources of knowledge."

Another cause, which probably acted quite as strongly to create in his mind a high estimate of woman, is to be found in the native force of his mother's character, and in the deference which in his early home was always paid to her judgment. Whenever, as a child, he asked any favor, he was always referred to his mother and her advice was taken, his father wisely judging that she was in a situation to know the character and dispositions of her children better than he.

The domestic influences exerted upon his mind during his youth were singularly favorable, and he always spoke of his home as a model of domestic happiness. His mother was the ruling spirit of the family, and through her judgment and tact every thing appertaining to it was well managed. The buoyancy of her nature, and the kindly temper of his father, made the house glad. Among so many children of various ages, there was no want of companions or of frolic, and in their sports their father joined with animation, and rivalled the boys themselves. No peevishness, melancholy, or ill temper dwelt like an evil genius at their hearth. Its common atmosphere was cheerfulness. There was no domestic tyranny, no curious prying into abuses, no magnifying of peccadilloes into crimes. In a large family of boys, the exuberance of animal spirits often tends to license, but too strict checks create an irritation worse than the fault, and engender formality and deceit. Upon this principle the household was conducted, and Dr. Story in particular avoided seeing any freak unless it bore the stamp of



immorality. An anecdote, which I have often heard my grandmother tell, will illustrate this.

One evening, (it was one of many,) after the family had retired, the elder boys rose, dressed themselves, and crept softly down into the kitchen. Having built a roaring fire in the great chimney, a privateering expedition investigated the larder, captured its viands, and they soon began preparations for a good supper and a jolly night. In the midst of these arrangements they were startled by a loud rap at the door. In a moment all was confusion. Extinguishing their lamps, hiding as well as they could the materials and implements of cookery, and clapping a wooden cover before the oven, they fled for concealment. The steps of the Doctor were heard on the stairs, and in a moment he entered. The savory smell could not fail to attract his attention, and glancing round the room he saw, peeping from under the table, the legs of one of the boys, who had not calculated on the development made by the lamp. But, apparently blind and deaf, he went straightway to the door and admitted the visitor who came to consult him professionally. As the two sat talking before the fire, a scrambling noise was heard under the table, which the visitor noticed and observed upon. "Ah," says the Doctor, "you see we keep a dog." Upon the departure of his patient he went directly up stairs, and recounted the whole affair to his wife, whom he recommended to take better care of the provisions for the future.

Even in youth his father seems to have treated him with confidence, and not to have claimed that purely formal respect which proud and weak men so frequently exact, and which was in harmony with the customs of

the time. The proverb that familiarity breeds contempt, is true only of the vulgar and mean,—it is not true of the generous and noble. A father's influence is never great over a child with whom he has no confidences, and there is not a readier means to win the heart and improve the mind of children than by affectionate freedom of intercourse. Familiarity will create disrespect for no quality worthy of esteem, but formality is the hot-bed of hypocrisy. In a letter to me, dated February 10, 1833, my father says:—

“I was about your age (fourteen) when my father first began to give me his confidence, and to treat me as one entitled to it. He freely conversed with me on all his hopes and his situation in life, and taught me to feel the importance of firmness, sound morals, and an ambition of excellence. He told me, that I should be obliged to depend on my own exertions for my success in life; that he should leave little or no property, and that I must study to fit myself for my profession in life. I never forgot his advice and kindness; it was present to me at all times, and gave a new turn to my thoughts. From that time I began to think that I ought to cease to be a *mere boy*, and to struggle for distinction as a man.”

On religious questions, where firm conviction or prejudice of education are so apt to engender bigotry and uncharitableness, his home influences were admirable. The tolerance of his father for all differences of opinion, and the mildness with which theological matters were discussed by him, made a deep impression on the mind of his son. Ample testimony on this head is given in a passage already quoted from the Autobiography.



During the early period of his life an accident befell him, which wellnigh proved fatal. His escape he owed to his mother's presence of mind and energy. He thus relates it in his Autobiography:—

"I slept in a small chamber over the front entry of my father's house, and the bed had curtains to it. I went to bed at my usual hour, and placed the candle on a chest, which was at the bottom of the bed, and so near that it touched it. From carelessness, I placed the candle close by the curtains, and being very sleepy I forgot to put it out. By some accident it afterwards fell over and the curtains and bed caught fire. I was asleep. The family were not yet retired to rest. My door was shut; but my mother, sitting in a distant room, smelt something burning. Immediate search was made in the room, and in those adjoining, but nothing was found. It then occurred to her that I had gone to bed about half an hour before with a light, and she instantly exclaimed that it must be in my chamber. My father ran up over one flight of stairs, and my mother over another. My father arrived first, opened the door, and the smoke was so intense and suffocating that he fell back breathless. My mother at this moment arrived, rushed in, and with that intrepidity and presence of mind which never deserts a woman on such occasions, she caught me from the blazing clothes and carried me down stairs in her arms. I was not sensible of any thing until I was below, and then found myself in my mother's arms. She was very severely burnt. I suppose that I was nearly suffocated when I was seized. The fire was stopped. And thus my life, when in the most imminent jeopardy, was saved. This admonition was sufficient to guard me at all times from indulging in that most dangerous practice, reading by candle light in bed."

It will be interesting to glance at the influences ex-

erted upon his mind by the place where he was born and spent his early years. Marblehead is a rocky peninsula, jutting out from Massachusetts into the Atlantic Ocean. The three principal sides are washed by the tides of the sea, the only entrance except by water being on the western side, where the town narrows up as it joins the main land. On the one side its rocks are high and precipitous, and on the other it is skirted by a long, hard beach. Being thus completely isolated, and serving as a thoroughfare to nothing but the sea, it was lonely, retired, and frequented solely by those who had a local interest. A railway has of late years broken in on its seclusion and given an impulse to its growth, although it still retains in a measure its original peculiarities. Its almost exclusive occupation is now, and was during the youth of my father, in the fisheries, — and a large number of vessels went from its harbor to the stormy and foggy waters of the Newfoundland Banks. The main part of its population were sailors and fishermen, who, being drawn from all quarters of the globe, composed a strange heterogeneous society, having the customs, superstitions, and language of every country. Of all classes of persons sailors are the most credulous, and Marblehead was a sort of compendium of all varieties of legend. For instance, the belief in the Pixies of Devonshire, the Bogles of Scotland, and the Northern Jack o'Lantern was prevalent there; — and my father has told me, that he was often cautioned by the fishermen, just at twilight, to run home, or the Bogles would be sure to seize him. Mystery was in the air; signs and tokens were drawn from the most trivial occurrences; shrieking ghosts haunted its wild and rocky coast; and the excited ima-



ginations of the people gave to common incidents the form and pressure of the marvellous. With the return of the fishing smacks every winter came a new importation of legend and adventure; and seated around their hearths during a stormy night, while the fire of huge brands and logs roared up the throats of their capacious chimneys and glowed upon the narrowing circle of listeners, the sailors would recount horrible adventures, dangers and supernatural visions, which made the blood chill, — while the wind and sleet were rattling on the panes, and the heavy roar of the distant surf sounding along the beach, filled up the pauses with its voice of lamentation and menace. Affectionate interest for friends tossing on the waves far away, and doubtful questionings of their welfare, added poignancy and truth to the wild stories. Such were the scenes which my father often described as common in Marblehead, and their influence upon the mind of a boy of an imaginative turn was naturally very great. On this subject he says in his *Autobiography*: —

“My native town, like other fishing towns, as I believe, was full of all sorts of superstitions. Ghosts, hobgoblins, will-o'-wisps, apparitions, and premonitions, were the common, I might almost say, the universal subject of belief, and numberless were the stories of haunted houses and wandering spirits, and murdered ghosts, that were told at the fireside, and filled my imagination with every kind of preternatural fear. It is to this circumstance that I principally owe my strong love of the marvellous in novels, and that I yet read with delight the romances of Mrs. Ratcliffe, which always appear to me to be realities, with which I have been long familiar.”

Even to the latter portion of my father's life, this same love of the marvellous continued, and at the time when Mr. Dickens was publishing his story of Barnaby Rudge, he watched with great interest for the numbers as they appeared, delighting in the mysterious vein which runs through that powerful work. But with especial pleasure did he read over and over again the opening scene in the tavern, where the parish clerk is relating the ghost story to the group of listeners; and whenever the book was taken up, he would select this, because, as he said, it recalled similar scenes within his experience, and revived feelings of olden times. Indeed, it was during the week immediately previous to his death, that one evening, when fatigued by the labors of the day, and reclining on the sofa, he begged my mother, whose reading he especially enjoyed, to read this scene to him, which she did. He listened to it with a fresh delight, and saying, as she finished, — "Dickens is a man of real genius. That representation is to the life. I have beheld it a hundred times in Marblehead."

In his Autobiography he thus describes his native town and its inhabitants.

"Marblehead is, as you know, a secluded fishing town, and having no general connection with other towns, it has not as a thoroughfare much of that intercourse which brings strangers to visit it, or to form an acquaintance with its inhabitants. When I was young there were many discouragements under which it was laboring. Its whole business was annihilated during the revolutionary war. Many of its inhabitants entered the army and navy, or served on board of privateers; and from the various calamities incident to such situations, the close of that war found the town with upwards of nine



hundred widows whose husbands had perished in the contest. It was greatly impoverished, and indeed in my earliest recollection seemed struck with a premature and apparently irretrievable decline. The general poverty, combined with other circumstances, made the resources of education narrow; and few books were to be found, and few scholars were nurtured on its rocky shores.

"The inhabitants of a town so situated, and especially of a town almost wholly engaged in the fisheries, whose voyages began and ended in the same port, and whose occupation when abroad is in sounding the depth of the ocean, and drawing their lines upon the stormy waves of the Banks of Newfoundland, have little variety in their thoughts or conversation. Their lives have few incidents but those perilous adventures which everywhere belong to a seafaring life. Their habits are necessarily plain, their morals pure, and their manners, if not rough, at least generally unpolished and unpretending. Their very equality of condition as well as uniformity of pursuit bring them all into the same circle, and there is little room for the pride of scholarship, or the triumph of superior knowledge.

"The people of Marblehead are a peculiar race; and as utterly unlike their neighbors as though they belonged to another age or country. The lines of their character are perhaps a little less marked than formerly, from their wider intercourse in later years with other places, but still they are deep and permanent, strong and full of meaning. They are a generous, brave, humane, honest, straightforward people; sagacious in their own affairs, but not wise beyond them; confiding and unsuspecting; hospitable by nature, though stinted in means; with a love of home scarcely paralleled, and an indifference to the show and splendor of wealth, which cannot easily be imagined; frugal and laborious; content with their ordinary means, neither rejecting learning nor over anxious for its attainment. The very rocks of their shores, the very barrenness of the strand on which

their buildings rest, the very scantiness of the mother soil on which they were born, and in which they expect to lie buried when they are dead, have to them an indescribable charm. They love it with an intensity of interest which neither time nor distance can control. They seem perpetually to exclaim, 'This is my own, my native land.'

"It was among these people that I passed my early days; and as my father was the physician of a very large number of their families, I was familiar with them all from my youth. And if at any time in my life you have seen me sympathize with the poor, the lowly, the humble, and the unfortunate, depend upon it I learned the first lessons of charity in my father's house, and from my daily participation in the feelings and wants of those who were my daily associates."

Among the inhabitants of the town were many peculiar characters, of whom my father used to relate anecdotes and to describe as ready-made for the hands of the novelist. Among them was an eccentric and perverse man of secluded habits, of considerable study, and of great natural sagacity, whom the townsfolk nicknamed, Uncle Dimond. Scarcely any of the humbler people in Marblehead had a doubt that he was "in league with the devil," as they expressed it,—such being the natural mode in which a people so simple, ignorant, and superstitious, explained a combination of eccentricity and information,—and numberless are the stories which I have heard told to prove his supernatural powers.

In Marblehead, words and names

"Suffered a sea-change  
Into something rich and strange."

Those who knew my father will remember to have heard



him speak of "Skipper Flurry," "Old Boy Trash," "Hoppy Kitchen," "Josh Foster," and a score of others. The name of Crowninshield was transformed, in "that classic dialect," (as my father always called it,) into Grounsell; and a French family named Blancpied having emigrated there, its name settled into the less euphonious one of Blumpy.

Occasionally, after my father had been made a Judge, he found advantage in the recollection of these peculiarities. Once, while he was trying a case in the Circuit Court, in Boston, the clerk called out the name of one of the jury as Michael Treffery, (it being so spelt.) No answer was given. Again he was called, and still there was silence. "It is very strange," said the clerk, "I saw that man here not two minutes ago." "Where does he come from?" asked the Judge. "Marblehead, may it please your Honor," said the clerk. "If that's the case," said the Judge, "let me see the list." The clerk handed it up to him. He looked at the name a minute, and handing back the list, said, "Call Mike Trevye," (throwing the accent on the last syllable.) "Mike Trevye," called the clerk. "Here," answered a gruff voice. "Why did you not answer before?" said the clerk. "Treffery is no way to pronounce my name," said the jurymen,—"My name is Mike Trevye, as the Judge knows."

Another anecdote to the same purpose was furnished me by Mr. George Wilson. He says,— "On one occasion, when some of our fishermen were in court to settle a mutiny, which had taken place on the Grand Bank (of Newfoundland,) one, on being called upon to state what he knew, said, that the skipper and one of his shipmates

had what he called a "jor of ile." The presiding Judge in vain endeavored to get a more intelligible answer, and finally your father was called upon as usual to act as interpreter to his townsman, which he immediately did, telling the Court, that a "jor of ile," in the Marblehead dialect was, a "jaw awhile;" which, being interpreted, meant, that the two men abused each other grossly for some time. This, as you may suppose, excited not a little merriment."

The infamous memory of one of the inhabitants of the town is enclosed like a noxious fly in the amber of an old rhyme, which indicates the generous character of the people, and contains a peculiarity of their pronunciation in giving the sound of *o* to *a*. The rhyme relates to a captain of a vessel, who was guilty of the inhumanity of sailing past a wreck, on which there were five persons, without attempting to succor them, and who was in consequence tarred and feathered by the inhabitants upon his return. Spelled as pronounced, it is as follows:—

"Old Flood Ireson, for his hord hort,  
Was torred and feathered and corried in a cort;  
And for leaving five men on a wrack,  
Was torred and feathered all over his back."

"From the circumstances," continues the Autobiography, "to which I have above alluded, you will readily understand that, in my early days, I gathered very little from general society, or even from books, to stimulate my ambition or awaken my curiosity. I was, therefore, left very much to my own thoughts and amusements. My delight was to roam over the narrow and rude territory of my native town; to traverse its secluded beaches and its shallow inlets; to gaze upon the sleepless ocean; to lay myself down on the sunny rocks



and listen to the deep tones of the rising and the falling tide ; to look abroad, when the foaming waves were driven with terrific force and uproar against the barren cliffs or the rocky promontories, which everywhere opposed their immovable fronts to resist them ; to seek, in the midst of the tremendous majesty of an eastern storm, some elevated spot where, in security, I could mark the mountain billow break upon the distant shore, or dash its broken waters over the lofty rocks which here and there stood along the coast naked and weather-beaten. But still more was I pleased, in a calm summer day, to lay myself down alone on one of the beautiful heights which overlook the harbor of Salem, and to listen to the broken sounds of the hammers in the distant ship-yards, or to the soft dash of the oar of some swift moving boat, or to the soft ripple of the murmuring wave ; or to gaze on the swelling sail, or the flying bird, or the scarcely moving smoke, in a reverie of delicious indolence."

Goethe, in his correspondence with Zelter, says, — "that the most remarkable excellencies of all the English poets, may be traced to descent and education ; the meanest among them has Shakspeare for his ancestor, and the ocean at his feet." The ocean individualizes those who live on it and beside it, more than any other influence of nature. The wild, lonely, and exposed position of Marblehead, surrendered, as it were, to the ocean, and beaten by the surf-wave rolling heavily along from far Norwegian shores, must have had a strong influence in shaping and tempering the imagination of the boy. The whole Atlantic was before him when he stood upon the rocks, with all its changes from the terrible to the gentle. And in this open book he read. But he seems to have been more affected by its might than by its beauty. The inland scenery of the town was rude,

stern and without the graces of cultivation. And the Calvinism of the scenery, uniting with the Calvinism of the pulpit to which he weekly listened, deeply impressed his mind. While, as a youth, he sat upon the cliffs, or wandered round the lonely shores, revolving those great questions of the nature of God and the destiny of man, which began to agitate his mind, these influences saddened him, and overcame his natural buoyancy. He says in his Autobiography:—

“It is somewhat singular, however, that though I had a good deal of the vivacity of youth, I was much given to private and contemplative reading. I had been bred up in a church which inclined strongly to Calvinism, and my uncle (who, as I have stated, was the minister of it,) was much inclined in his preaching to dwell on the terrors of the law, upon man’s depravity, and eternal torments, and he felt no scruple in mentioning hell even to ears polite. My earliest impressions, therefore, of God were those of terror, and not of love; of awe, but not of filial affection. And in my secret devotions I approached him as a being whom I was to propitiate, rather than a parent of whom I was to ask blessings. My thoughts, on this account, were often gloomy; and I know not how it happened, but so the fact was, that topics respecting death, the grave, and eternity, became more familiar with my thoughts than any other. I owned a little pocket volume of Young’s Night Thoughts, which I used to carry about in my solitary rambles, and read with intense interest, I should not say with pleasure, for it was rather darkness visible.”

It was at this time, and under these influences, that the enthusiasm of the boy begat a love of poetry and a desire to be a poet,—and as he mused upon the rocks, or tra-



versed the beaches, he committed to verse the thoughts and images which took shape in his imagination. Thus early he devoted himself to those ideal pursuits, which are the best defence against temptation, and which tend to keep unsullied the inward spring of our affections. He says in his Autobiography, —

“From my early years I had an inclination for poetry. I wrote verses when I was not more than twelve years old, though I cannot say with Pope, ‘I lisped in numbers, for the numbers came.’ On the contrary, it was an exercise of skill with me, not, as I imagine, very successful or very attractive.”

Successful or not, the desire shows the tendency of his mind. The Autobiography proceeds:—

“Just as I was fifteen years of age, in the autumn of 1794, an event occurred, which had some influence upon my character and destiny. I was preparing to enter Harvard College the next year, and having mastered the usual preparatory studies in Latin, and that most discouraging book, the Westminster Greek Grammar, I was beginning to study the Gospel of John, with a view to make an easy transition into Greek. Some boyish affair, I have quite forgotten what, induced me to chastise a lad belonging to the school, who boarded with my instructor, and this reaching the ears of the latter, he determined, under another pretence, to seek an occasion in school to punish me for the transaction. It is very easy to find such an occasion when we are determined on it. Some very slight peccadillo occurred on my part. I was called up in the presence of the whole school and beaten very severely with a ferule on my hands. I bore it without shrinking, and submitted without resistance, being at that time too old to cry like a little boy, and having some pride to meet the punishment manfully. The schoolmaster was a man of vio-

lent and irascible temper when aroused, and seeing my calmness and firmness he struck me in his rage, I believe, as many as a hundred blows on my hands, until the agony was so great that I could no longer restrain myself from crying aloud. I was then ordered to my seat, and remained there suffering much pain until the school was dismissed. I never can think of this brutal and coarse treatment by this man, who was a clergyman, without a feeling of resentment and disgust. A few years after, when I had arrived at manhood, he took occasion to express his regret at the transaction, his consciousness that he was in the wrong, and my total guiltlessness of any thing to justify the punishment. He admitted that it was a retaliation for the chastisement I had inflicted on his boarder, and that his passions had carried him beyond the bounds of moderation. I forgave him, heartily forgave him. But though in other respects a deserving man, I never desired to have any communion with him beyond the mere formalities of common respect.

“With the approbation of my father, I immediately left the academy. But it was a case full of embarrassment. There was no other school in the town in which the learned languages were taught; and with so large a family the expenses attendant upon an education at a distance were not to be overlooked. Fortunately, the principal town schoolmaster (whom I shall always remember with gratitude and respect) was acquainted with Latin, and the Greek of the New Testament, and he undertook to superintend my studies in those languages in the common books. It was in the autumn, and I formed the sudden resolution to prepare myself so as to be offered for admission at Harvard College in the ensuing January vacation as a freshman. To do this was no small labor, and required extraordinary diligence and exertion. My master had not much time to assist me, and undertook little beyond merely hearing my recitations. My pride was roused, and my ambition stimulated. I determined to go through the labor; and though I was but just then in the



beginning of Greek, and had considerable in Latin as well as in other departments to master, I was not discouraged. In the course of two short months, I had not only gone over all these studies with care, but I had several times reviewed them, and I felt confident that I could pass the necessary examinations.

"Accordingly, just as the winter vacation was about to commence, (it was then a vacation of six weeks,) I was taken by my uncle to Cambridge for examination, and I felt the flush of hope play on my cheeks. Great was my disappointment upon being told by the president upon my arrival there, that I must be examined, not merely in the previous preparatory studies, but in all the studies which the freshman class had been pursuing for the last six months. I was completely overwhelmed. I was dumb, disconsolate, and mortified. In one moment, at a single blow, all my hopes were demolished and my labors lost. I scarcely spoke a word during my whole homeward journey. My uncle, however, had taken the precaution to ascertain to what extent the class had gone, and what were the books which I must study.

"I returned home in great dejection. My father asked me what I intended to do? I replied, after some hesitation, that there were six weeks of vacation, and if he pleased, I would try to fit myself in that period for examination in the prescribed studies. I told him I could but fail, and if so, I must wait patiently until the next commencement. I went to bed, and got up the next morning with a determination to go on. All the books were obtained that day, by purchase or borrowing. But here a new difficulty presented. I had no knowledge of the Greek dialects, and unluckily my master was in the same predicament; while the *Iliad*, (which was one of the books to be studied,) was full of them. All he could promise was, that he would hear me recite in Homer as well as he could. But he promised no aid in mastering these difficulties.

"My task was now before me. I have a distinct recollection of the main parts. Sallust was to be read through, the

Odes of Horace, two books of Livy, three books, I think, of Xenophon's *Anabasis*, and two books of Homer's *Iliad*, besides English Grammar and Rhetoric, and, I think, Logic, and some other studies. I sat down boldly to the task, reciting every morning five lessons, which I mastered during the preceding evening, and five or six more in the course of the day. It was intense labor, but I found no great difficulty except in Homer. The dialects puzzled me exceedingly, and my treacherous memory failed in preserving them accurately, so that I was often obliged to go over the same ground. For my first lesson in Homer I got five lines well; for my second, ten; for my third, fifteen; and then the mystery dissolved apace. In the course of the first three weeks I had gone through all the requisite studies. I could look back upon my past labors with the silent consciousness of victory. There is nothing to a young mind, unaccustomed to the exercise of its powers, so gratifying as this. The hero who conquers in battle, the orator who triumphs in the senate or the forum, feels not a more intense delight, than the youth first perceiving that though born of the dust he is not altogether earth, but that there is something within him of an ethereal and intellectual nature. The remaining three weeks I passed in reviewing all these studies, which I did in the most difficult, more than once, and could say without a boast, at the end of the time, that I could go through two hundred lines of Homer at a recitation. At the end of the vacation I was again offered for examination, and without difficulty obtained my matriculation."

The memory of these devoted studies is still preserved in the family. His brother, Mr. Isaac Story, who at this time slept in the same room with my father, says that, when overpowered with sleep he himself had sought his bed, he left Joseph still at his vigils, which were pro-

tracted beyond midnight, and on awaking at an early hour in the morning, he uniformly found the patient student at the same labors.

This brings us to his college life. .



## CHAPTER III.

### COLLEGE LIFE.

ENTERS COLLEGE—NEW IMPRESSIONS—DIFFICULTIES TO CONTEND AGAINST—FRIENDSHIP WITH MR. TUCKERMAN—LETTER TO REV. W. H. CHANNING—DESCRIPTION OF COLLEGE LIFE AND STUDIES AND INFLUENCES—EFFECT OF CHANGE OF PLACE ON HIS RELIGIOUS VIEWS—BECOMES A UNITARIAN—POEMS WRITTEN IN COLLEGE—TALENT FOR VERSIFICATION—ARTISTIC AND MUSICAL TASTE—EMULATION WITH CHANNING—LETTER DESCRIBING THE CHARACTER AND YOUTH OF CHANNING—MORAL CONDITION OF THE COLLEGE—HIS CHARACTER, SOCIAL NATURE, TEMPERANCE—VERSATILITY OF POWERS—STUDIOUSNESS—LEAVES COLLEGE.

My father was now in college. He joined his class in January, 1795. The university was an arena on which he found himself in free intercourse and generous emulation with young minds of his own age, who were pressing forward to one goal of distinction. Classic associations and the allurements of literature and knowledge were in the very air. The spirit of the past haunted the venerable buildings. Coming from a secluded fishery village, and from an illiterate though generous people, whose main object in life was the satisfaction of their physical needs, and with whom he had no literary sympathies, into this microcosm of academic life, a new and delightful world seemed to open before him. To his enthusiastic eyes the change was like mounting from the dull, tame level of prose up to the romantic heights of poetry. From this P.egah, he saw a

fair land of promise before him in the future. The soul which had been yearning for the sympathy of equals, and whose desires had been so scantily answered in his native village, delighted in the quickening influences of this new existence and expanded in its genial atmosphere. His mind was pledged to lofty aims; his heart was surrendered to friendship.

In a letter to Mr. Everett, giving a succinct sketch of his life as the basis of a biographical notice of him, written by that accomplished scholar for the *New England Magazine*, he says:—

“My college life was inexpressibly delightful to me. I awoke, as it were from a dream. I saw knowledge before me as by enchantment. I formed friendships which have endured to the present hour. I became enamored of learning, and have never ceased to love it cordially. I studied most intensely while in college, and reaped the fair rewards in collegiate honors.”

Again, in his *Autobiography*, he says:—

“My entrance into Harvard College gave an entirely new course to my thoughts. Every thing was new to me. I seemed to breathe a higher atmosphere, and to look abroad with a wider vision and more comprehensive powers. Instead of the narrow group of a village, I was suddenly brought into a large circle of young men engaged in literary pursuits, and warmed and cheered by the hopes of future eminence.”

There were many difficulties to contend with at his first outset in college, which it required patience and time to overcome. It will be borne in mind that in Jan-

uary, 1795, he joined the class which had entered in the previous August, and was therefore about five months behind it. During those months it had become fused and the relative standard of the different members fixed, or at least approximated to. Young men in college are apt to be individually selfish, and collectively exclusive. A new comer is an intruder to be resisted. He is subjected to the strictest scrutiny and measured by a peculiar code. Novelty in manners, principles, or appearance, is regarded as a mark of arrogance or of folly, and the stranger is therefore either sneered at or laughed at. The class into which my father entered was no exception to the general rule, and at first he found his position unpleasant. He had no friends among the students and even no acquaintances, and he was obliged to win his way into their good graces as well as he could alone. Besides this, in my father's case, his advantages of education having been small, and having been forced to rely in great measure on his own efforts in preparing himself for college, he had contracted peculiarities of pronunciation in the Greek and Latin languages, and a singing intonation in reading, which created much amusement among the students, who did not hesitate to express it openly. On one occasion the presiding tutor, when an odd mistake of pronunciation had brought down a burst of laughter, silenced the noise by saying, — "You may laugh as much as you please at the mistake, but he knows his lessons as well, if not better, than any of you." Boys, as well as men, value strength, and the determination and talent of the stranger soon began to tell among his classmates, while the uniform good-nature with which he



submitted to the laugh, sometimes even joining in it contagiously, began to win their respect and esteem. In the course of a few weeks he became not only a favorite, but it was clear that he was to take a very high rank. These difficulties he thus alludes to in his Autobiography: —

“It was a considerable time before I could acquire any familiar acquaintance with my classmates. One of the disadvantages of entering at an advanced standing is, that the associations of your class are already selected and fixed; and that you enter as a mere stranger, without rights and without sympathy. Your rank is not fixed; your scholarship is not known; your character is not ascertained; and you are viewed with a coldness and reserve peculiarly painful to the frankness of youth. I had the good fortune to chum with a young man who saw my embarrassment and gave me a kind welcome. From the first moment of my acquaintance up to this hour there has been a most unreserved friendship between us. Not a shadow has ever obscured it. Not a chill has ever passed over it. I owe him much. He is one of the best and worthiest of men, and the lapse of thirty-five years enables me now to speak of him as a bosom friend, in whom I repose unlimited confidence and to whom I owe much of the truest happiness of life. May God preserve the blessing to me even to the close of my life.”

This was the Rev. Dr. Tuckerman, who, during his after life, was for a long time minister at large, — a missionary to the poor, — a genuine benefactor to his race, a man of the most amiable temper, and the broadest Christian charity. The warm wish of my father was not fulfilled. His friend died in April, 1840, leav-



ing behind him memories of many acts of beneficence that "smell sweet and blossom in the dust."<sup>1</sup>

The two friends lived together in the upper story of the south-easterly corner of Massachusetts College. A strong affection allied them. Often have I heard my father relate old college reminiscences of those days; how Tuckerman would go to Boston to pass the evening, leaving him alone to his books; how he would often spend his last cent to procure some little matter as a surprise for Tuckerman's supper, and setting the little tin coffee-pot over the fire, would prepare a hot cup of chocolate with which to warm his cold and hungry chum when he returned at midnight. Happy days were those, and innocent enough, with the cup of hot chocolate!

At a later period of his college life he lived as chum with Samuel P. P. Fay, afterwards the Judge of Probate for Middlesex county, with whom he maintained constant and affectionate relations of friendship to his death.

Dr. William E. Channing, the distinguished divine, and eloquent philanthropist, was his classmate. In answer to a letter from his son, Mr. W. F. Channing, asking for information as to the circumstances and influences under which the students then lived, my father gives the following interesting sketch of college life.

Cambridge, September 23, 1843.

DEAR SIR,

I HAVE received your letter of the 13th of September, and avail myself of the earliest opportunity to comply with your request. Indeed there is no labor which I would not

<sup>1</sup> A letter from my father written to Dr. Channing on the death of Dr. Tuckerman, will be found on a subsequent page.

willingly undertake, as far as my knowledge of your father extends in aiding you to give a full and comprehensive view of his character and attainments, which are held in such high estimation by all who knew him.

You express a desire "to obtain some general view of the circumstances and influences under which the student at that period (his collegiate life) lived."

I believe that this can be best done by giving you a brief sketch of the then state of collegiate life, and the relation which the students had with the then existing college Government. Things are so much changed since, that it is somewhat difficult to understand all the influences which then surrounded them. In the first place, the course of studies was far more confined and limited than at present. In Greek we studied Xenophon's *Anabasis* and a few books of the *Iliad*; in Latin, Sallust and a few books of Livy; in mathematics, Saunderson's *Algebra*, and a work on arithmetic; in natural philosophy, Enfield's *Natural Philosophy*, and Ferguson's *Astronomy*; in rhetoric, an abridgment of Blair's *Lectures*, and the article on rhetoric in the *Preceptor*; in metaphysics, Watts's *Logic* and Locke on the Human Understanding; in history, Millot's *Elements*; in theology, Doddridge's *Lectures*; in grammatical studies, Lowth's *Grammar*. I believe this is nearly the whole, if not the whole, course of our systematical studies. The college library was at that time far less comprehensive and suited to the wants of students than it now is. It was not as easily accessible; and indeed was not frequented by them. No modern language was taught, except French, and that only one day in the week by a non-resident instructor.

The means of knowledge from external sources were very limited. The intercourse between us and foreign countries was infrequent; and except to English literature and science, I might almost say, we had no means of access. Even in respect to English literature and science, we had little more than a semi-annual importation of the most com-



mon works, and a few copies supplied and satisfied the market. The English periodicals were then few in number; and I do not remember any one that was read by the students except the *Monthly Magazine*, (the old *Monthly*,) and that was read but by a few. I have spoken of our semi-annual importations; and it is literally true, that two ships only plied as regular packets between Boston and London, — one in the spring, and the other in the autumn, and their arrival was an era in our college life.

In respect to academical intercourse, the students had literally none, that was not purely official, except with each other. The different classes were almost strangers to each other, and cold reserve generally prevailed between them. The system of "fagging" (as it was called) was just then dying out, and I believe my own class was the first that was not compelled, at the command of the senior class, to perform the drudgery of the most humble services.<sup>1</sup> The students had no connection whatever with the inhabitants of Cambridge by private or social visits. There was none between them and the families of the President and Professors of the college. The regime of the old school in manners and habits then prevailed. The President and Professors were never approached except in the most formal way, and upon official occasions; and in the college yard (if I remember rightly) no student was permitted to keep his hat on if one of the Professors was there. President Willard was a sound scholar, of great dignity of manners, but cold and somewhat forbidding in his demeanor. Professor Tappan belonged to the old school of theology, and had much of the grave courtesy of the clergymen of that school. Professor Webber was modest, mild, and quiet, but unconquerably reserved and staid. Professor Pearson was an excellent

<sup>1</sup> My father was very active in this reform, and not only refused to exercise any such rights, but used his utmost endeavors to break down the system. He invited his own fag to his room, treated him with cordiality, and made him his friend.



critic, but somewhat severe and exact in his requirements; and I think that we all greatly profited by his instructions, even when we thought them not delivered in very gentle accents. Our tutors were young men, and I will add, that they were most diligent and conscientious in their duties. Some of them must have been known to you, for they are still living, — Mr., afterwards Professor Popkin; Mr., afterwards Professor Hedge, and Mr., now Doctor Pierce, of Brookline. I must do all our instructors, the Professors as well as the Tutors, the justice to say, that their instructions were very valuable to us; and that they all took a deep and earnest interest in our advancement. For myself, at this distant day, I entertain the liveliest gratitude to them for their aid in awakening and guiding my love of letters. But private social access to them did not belong to the habits of the times, and a free and easy intercourse with them, which now would not be thought unbecoming, would at that time have been thought somewhat obtrusive on one side, and on the other would have exposed the student to the imputation of being what, in technical language was called a "fisherman," — a rank and noxious character in college annals.

These suggestions may at once put you in possession of the general influences of college life. The students were generally moral, devoted to their studies, and ambitious of distinction. There would be then as now, an occasional outbreak; but I am not aware that either immorality or dissipation, or habitual indolence was more in fashion than in succeeding times. There will always be a little sprinkling of these among students of an ardent and reckless character. In one particular a salutary change in the habits of life has taken place. There is universally far more temperance now in the use of wine and spirituous liquors. But the instances of excess then were rare, and were always frowned upon by classmates.

Passing from what may be deemed the interior influence of college life, I would say a few words as to those

were exterior. And here the principal inquiry would undoubtedly be, what was the influence of the metropolis, in the immediate neighborhood. I have no difficulty in saying, that it was very slight indeed compared with what Boston now exerts with so much potency and variety of operation. The intercourse between the students and Boston, when my class entered college, was infrequent and casual. West Boston bridge had been completed but a short period before. The road was then new and not well-settled, the means of communication with Cambridge almost altogether by walking; and the inducements to visit in private circles far less attractive than at present. Social intercourse with the young, and especially with students, was not much cultivated; and invitations to parties in Boston rarely extended to college circles. The literature and science, the taste, talent, and learning, now so abundantly found in that interesting city, have been in a great measure the growth of later times, and the result of the gradual progress of wealth and refinement, and a more comprehensive education. If the college in this way lost much of the advantages, arising from the zeal and ambition, and brilliant eloquence of later days, it is but just to add, that it escaped also some of the dangerous allurements which now surround the paths of the young on every side.

Now, from what I have ventured to suggest, I believe that during the collegiate life of your father the exterior influences of the literature, science, and social refinements of Boston were not of a nature to bear much upon his habits or pursuits. But there was one circumstance of a public and political character, which was felt with no small intensity among us near the close of our collegiate life. I allude to the political controversies between our national government and France, which then agitated the whole country, and ultimately led to that war and non-intercourse which the public history of the times has fully explained. The party then known by the name of Federalists possessed a very large



portion of the wealth, talents, and influence of the country. President Adams was then at the head of the national administration; a majority of congress supported all his leading measures; and in New England, his popularity was almost unbounded, and sustained by a weight of opinion and of numbers without example in our annals. The opposition to his administration here was comparatively small, — although in the Southern States it was formidable. Party spirit ran excessively high, and indeed with almost irrepressible fury. Badges of loyalty to our own government and of hatred to France were worn everywhere in New England, and the cockade was a signal of patriotic devotion to “Adams and Liberty.”

It was impossible that the academical walls could escape the common contagion. The students became exceedingly interested in the grave questions then before the country; they were nearly all united, heart and hand, in favor of the national administration, and warmly espoused the cause of their country. In our senior year (1798) your father, who was among the most warm and decided students in his political opinions, procured a meeting of the students with the sanction of the college government, for the purpose of expressing their opinions on the existing crisis of our public affairs. The meeting was held. He made a very eloquent and powerful speech, and was seconded with great zeal and earnestness by myself and others. The result was, that a committee, of which your father was the chairman, was appointed to draw up an Address to President Adams. This, with the exception of a single passage, afterwards added, was written by himself; and it was reported to the students and accepted by acclamation. It was sent to President Adams, who made a written reply, in a very commendatory style; and both the Address and the Answer were published in the newspapers of the day, and received general applause. I have no copy of the Address, but I believe that it was published in the “Columbian Centinel,” then edited



by Major Benjamin Russell, and afterwards republished in a volume containing a Collection of the Public Addresses to President Adams on the same occasion. Unless my memory greatly deceives me, you will find in that Address some striking and beautiful exhibitions of your father's youthful eloquence.

There is an anecdote connected with his early enthusiasm, and devotion to politics, which is brought to my recollection, by the occurrences to which I have just alluded. Our class took their degrees of A. B. at the Commencement of the ensuing summer, (1798.) Your father had, as he eminently deserved, the first English oration,—the reward of the highest scholarship. In preparing this he had infused into it much political matter of a warm and vehement character. The college faculty were all of the same political opinions, which he desired to expound and proclaim. But with the prudence and caution of such a body, they very properly thought, that it was not fit at a public Commencement to allow the students to express opinions upon such exciting topics, as it might injure the college, or at least give it the character of a party institution. The faculty accordingly struck out nearly all, if not all, of the political matter,—which created so much indignation in your father, that he resolved not to deliver the oration, thus mutilated as he deemed it, and to run the risk thereby of losing his degree. In this resolution I believe he persisted up to the eve of the Commencement, when he was induced, by the earnest appeals of a most considerate and distinguished gentleman, to abandon his resolution. The facts, however, became somewhat known abroad, and in the course of delivering the oration he alluded to the suppression in terms so striking, yet so respectful, that he was cheered by the whole audience. This oration was received with unbounded applause, as hearty as it was flattering; and when he left the stage, some minutes elapsed before the cheering ceased. Many, many years have since elapsed, but the deep impressions then left

on my mind of the brilliancy, vividness, and eloquence of that performance, are yet fresh and unobscured.

October 12, 1843.

From what has been already stated, you will readily be able to comprehend the general influences, — the genius of the place, — which surrounded your father during his college life. If I were to venture upon giving an opinion upon such a subject, necessarily conjectural, I should say that there were few or none of an external character either powerful or active. What he then was, was mainly effected by the impulses of his own mind and heart, — warm, elevated, ambitious of distinction, pure, and energetic. His associations were with the best scholars of his class. His friendships were mainly confined to them; he neither loved nor courted the idle, or the indifferent; and with the vicious he had no communion of pursuit or feeling. He then loved popularity, but it was the popularity (as has been well said on another occasion) that follows, not that which is run after. It is that which is won by the pursuit of noble ends by noble means.

One circumstance, however, is here brought to my thoughts, on which I would for a moment dwell, because I am quite sure that it gave a powerful impulse to his ambition. At that period all the scholars of the class attended the recitation at the same time; and of course recited their lessons in the presence of each other. The average number of the classes did not generally vary from the numbers now in college, at least not to a degree which would even now make the assemblage of the whole class in the same room inconvenient or burthensome.

This had, in my judgment, the most beneficial influence. In the first place, it enabled all the class clearly and accurately to ascertain the relative scholarship and attainments of each scholar, and thus one great source of jealousy, and the suspicion of partiality on the part of the college faculty was either extinguished or greatly mitigated; — and I do not



hesitate to say that the relative rank then assigned to the various students by their own classmates was generally correct, impartial, and satisfactory. In the next place, a generous spirit of emulation pervaded the whole number. We were proud of our best scholars, and awarded them just praise with a liberal courtesy; and those who were thus distinguished were stimulated by high motives to deserve and to secure this approbation. No man, I am persuaded, felt more or appreciated more justly than your father this truly valuable incentive to exertion. He had then, as in his after life, a lofty ambition for excellence, and he sought reputation by aims as pure and moral as they were enlightened. I must confess I have never ceased to regret that the old system, the advantages of which I have thus briefly alluded to, has ever been departed from in the college arrangements. If this were the proper time, or place, I would state many reasons why I hold this opinion, and which, at least in my own judgment, make the change more than a doubtful innovation.

So far then as external influences had any bearing upon the formation of the character of your father, during his college life, I believe they were principally, if not wholly those of which I have spoken. But I cannot help thinking that external influences were not those which mainly contributed to fix the character of his life; the influences which seem to me to have regulated his pursuits, his taste, his feelings, and his principles, were chiefly from within,—the workings of genius upon large materials, a deep and wakeful sensibility, an ardent love of truth, a moral purity, a conscience quickened and chastened by an earnest consciousness of religious obligation, and a spirit warmed and elevated by a deep interest in the human race.

What my father here says of Channing was eminently true of himself. Genius undoubtedly fashions circumstances and transfigures them with its own light;



but circumstances also react upon genius and bias its development. We see in this but that double law which governs all the operations of nature; of systole and diastole; centrifugal and centripetal; attraction and repulsion. Man is part matter, part mind, and the spirit alternately receives impressions and generates them. But the mind seems to be peculiarly sensitive to external influences at that turning point of life, when the youth is becoming the man and passions are blowing from all quarters of the inward world. Young, undisciplined, with its new powers struggling into play, and devoid of aim and determination, it often receives its direction from trivial circumstances. The course of the bounteous river may depend upon some chance obstacle that opposed the young rill just issuing from its mountain spring.

The effect of circumstances is plainly to be seen during my father's college life. Change of place and companions wrought a complete change of religious views. The sterile rocks and moaning sea of Marblehead had overawed his imagination. The rocks seemed like Fate, baffling the blind longings of the sea. But in the teeming luxuriant country, with its flower-strewn fields, his heart assumed its natural hue of cheerfulness, and he no longer believed in the total depravity of man. As he wandered under the sweeping elms, and saw the sinuous Charles lapsing quietly to the sea through its level basin, or listened to the "wandering voice" of birds while he trod the piny carpet of "Sweet Auburn," (then a favorite haunt of the students,) he could not but feel that God's blessing was on the world and his creatures. The beauty of nature proved the beneficence of the Crea-

tor. A weight was now lifted from his heart. He saw the shining thread of love lead through all the dark labyrinths of life. And from being a Calvinist, he became a Unitarian. While in the ignorance and bigotry of the age Unitarianism was considered as nearly a convertible term with Atheism, and was scarcely avowed, he believed in the humanity of Christ, and fearlessly spoke his mind. His brother, Mr. William Story, says, —

“After my continued absence from home for four or five years, we met again, your father being now about eighteen years old, and renewed our former affection towards each other. At this time we were, from a similarity of sentiment, drawn more closely together. I allude particularly to our religious opinions. We frequently discussed the subject of the divinity and the humanity of Christ, and we both agreed in believing in his humanity. Thus you see that your father and myself were early Unitarians, long before the doctrine was preached among us by any one, unless I except Dr. Bentley of Salem.”

This faith he retained during his whole life, and was ever ardent in his advocacy of the views of Liberal Christians. He was several times President of the American Unitarian Association, and was in the habit of attending its meetings and joining in its discussions. No man, however, was ever more free from a spirit of bigotry and proselytism. He gladly allowed every one freedom of belief, and claimed only that it should be a genuine conviction and not a mere theologic opinion, considering the true faith of every man to be the necessary exponent of his nature, and honoring a religious life more than a formal creed. He admitted within the pale



of salvation Mahommedan and Christian, Catholic and Infidel. He believed that whatever is sincere and honest is recognized of God;—that as the views of any sect are but human opinion, susceptible of error on every side, it behooves all men to be on their guard against arrogance of belief;—and that in the sight of God it is not the truth or falsity of our views, but the spirit in which we believe, which alone is of vital consequence. He was very fond of quoting the well-known lines:—

“For modes of faith let graceless zealots fight,  
His can't be wrong whose life is in the right.  
In Faith and Hope the world will disagree,  
But all mankind's concern is Charity.”

During college life he was a devoted reader of poetry, and cultivated his talent for versification. He wrote for the newspapers of the day, and hid himself very frequently in the poet's corner. He says in his Autobiography:—

“One of my earliest efforts was a translation of an ode of Horace, of which I have now no other remembrance than that it was thought well of by those about me. I received the usual rewards of good scholarship at the public exhibitions, delivering a poem at one exhibition, and a mathematical exercise at another, in my senior year; and at the Commencement at which I was graduated, I delivered the poem immediately before the closing English oration. It was received with much applause; but I burned it with some other early efforts a few years afterwards, and my memory retains no traces of it.”

The subject of this poem was “Reason.” He also deli-



vered the Valedictory Poem at the request of his class, but this he destroyed. At the same time, (June 21, 1798,) he wrote an ode which was sung by the collegians in the chapel, to the air of Hail Columbia. It was published in the *Columbian Centinel*, and this paper, speaking of it, says, —

“The ode which, from a too cursory perusal, we had not duly estimated in our last, ranks among the happiest effusions of our classic groves. Its author, Mr. Story, is not only a *friend* but an *honor* to his country, and it is with pleasure we are informed that he is appointed to deliver a poem at the ensuing Commencement, from which the public may anticipate the fire of patriotism united to the energies of genius.”

The letters written during this period to his classmates, contain many poetic quotations and references to poems, or “effusions,” as he always calls them, of his own. His themes he sometimes versified, — and on one of them, the subject of which was “*Aurora Musis Amica*,” he wrote, as he says in one of his letters, about two hundred and twenty verses. For the poetry of Pope and Goldsmith he had an enthusiastic admiration.

In one of his letters he commends the epistle of Abeldard to Eloisa as containing sentiments “such as every one who truly loves would express on a similar occasion,” and speaks of the ballad of Edwin and Angelina as being “equally charming.”

His heart at this age ignited like tinder with the sparkle of every bright eye. One of the “goddesses” of the hour he describes as possessing “an angelic form, perfect symmetry of features, eyes that flash lightning,

a bosom that heaves with all the divine sentiments of love, a delicacy of thought that starts at the shadow of vice, a mind glowing with all the ardor of genius." He seems to have been overflowing with love for everybody, of either sex, with whom he came in contact, and all his letters abound with the warmest expressions of affection and confidence.

At this time he was very fond of music, and displayed considerable talent in drawing and painting. But the opportunities of cultivating these arts were then very slight, and he had neither means nor time to pursue the study of them. There is, however, a water-color drawing of the colleges made by him at this period, which shows much promise. And had his mind not taken a different direction, it seems probable that he might have attained at least success in the fine arts. He always possessed skill and facility in the mechanic arts, and though a modest critic, and willing to be pleased with a slender merit in others, had nevertheless a quick, fastidious, and accurate eye, and those powers of comparison which are the great faculties in art. The Autobiography continues:—

"Of course, on entering my class, I had no rank, and therefore silently stood at the fag end of it. It was for me to prove that I had a title to a better place in the estimate of my judges, who were also my peers. It was some time before my classmates were inclined to form a favorable judgment, but by degrees I began to rise, and before I left college I had attained a high rank, (it is not for me to say how high,) for scholarship."

My father contested with Channing the first rank in



college, and lost it. From the statements of his contemporaries, however, I learn that he was quite the equal of Channing in all branches except English composition, (in which he always acknowledged himself to be the inferior of his distinguished classmate,) while in mathematics he was decidedly his superior. Their emulation was truly honorable and generous. No envy or jealousy soiled their endeavors, but like brothers sympathizing in one noble aim, they struggled side by side, proud of each other's strength, and at the close each assigning the superiority to the other. My father always declared, that the first part, which was given to Channing, was but the just meed of his genius and scholarship, and Channing, (as I am informed by his son) with the same generosity, always awarded the palm to my father, declaring that he should have had the first part, had he not preferred the poem. Such is the true chivalry of noble minds.

My father's testimony to the genius and character of his eminent friend, as given in a letter written on the death of Dr. Channing, will not be without interest in this place.

TO W. H. CHANNING AND W. F. CHANNING.

“Cambridge, May 6th, 1843.

“GENTLEMEN:

“The state of my health has not hitherto allowed me to reply to your circular letter, respecting the late lamented Dr. Channing. I have not in my possession any letters of his, unless perhaps in the shape of a mere billet upon some transient occasion. Indeed, for many years, owing to the wide difference of our professional pursuits and constant labors in our respective vocations, we had few opportunities of personal intercourse; but whenever we met it was with a reciprocation of warm friendship and mutual confidence,



which, begun in early life, had undergone no change. His private life and public services from the time of his first settlement over the Federal Street Church until his death, are too well known to require on my part any sketch, either of character or of narrative. But there are probably few, now living, who were as well acquainted with his collegiate course as myself, and I venture therefore to send you a few reminiscences of it.

"I had no acquaintance with Dr. Channing previous to my joining the class which entered Harvard College in 1794 and was graduated in 1798. I became a member of that class in January, 1795, and was then first introduced to him. He resided during the whole of his collegiate course with his uncle, the late Chief Justice Dana, whose residence was at some distance from the colleges;—and partly from this fact, and partly from his reserved although bland deportment, he did not associate much with his classmates generally, at the same time that he drew about him a circle of select friends from the most distinguished of his class with whom he indulged in frank, social intercourse, and by whom he was greatly beloved and respected. So blameless was his life, so conciliatory his manners, and so unobtrusive his conduct, that he enjoyed the rare felicity of being universally esteemed by his classmates, even by those to whom he was least known, except in the lecture hours as a fellow student. The little strifes, jealousies, and rivalries of college life, in those days, when all the class met at the same time in the recitation rooms, and thus each became the judge and close observer of the progress and literary attainments of all the others, and competition was at once free and earnest, and rank was fixed by the silent suffrage of classmates, even more than by the voice of instructors, with a fidelity which was rarely mistaken in the accuracy of its results;—those little strifes, jealousies, and rivalries, scarcely reached him; and his own rank and scholarship were from the beginning to the end of his academical career, admitted to be of the highest order. I do not

believe he had a single personal enemy during the whole period, and I am sure he never deserved to have any. His early reputation, as it budded, blossomed, and bore its fruits, was cherished by all his class as common property. We were proud of his distinction, and gratified when he was praised. We all then prophesied his future eminence, in whatever profession he should make his choice. Speaking for myself, I can truly say, that the qualities of mind and character, which then were unfolded to my own view, were precisely the same, which in after life gave him such celebrity. Perhaps in no single study was he superior to all his classmates. In the classical studies of that day, he was among the first, if not the first. In Latin more accomplished than in Greek. For mathematics and metaphysics he had little or no relish. He performed the prescribed tasks in these subjects with care and diligence, but with no ambition for distinction or pride of purpose. His principal love was for historical and literary studies,—for English literature in its widest extent, and for those comprehensive generalizations upon human life, institutions, and interests, which his enthusiasm for the advancement of his race, and his purity of heart led him to cherish and cultivate with profound attachment. I remember well with what kindling zeal he spoke on all such subjects, and one might almost then see playing about him the gentle graces, and the rapt devotion of a Fenelon.

In one particular he far excelled all his classmates, and I mention it because it is precisely that which in after life constituted the basis of his fame. I mean his power of varied and sustained written composition. It was racy, flowing, full, glowing with life, chaste in ornament, vigorous in structure, and beautiful in finish. It abounded with eloquence of expression,—the spontaneous effusion of a quick genius and a cultivated taste, and was as persuasive as it was imposing. All of us—by which I mean his academical contemporaries—listened to his discourses at the literary exhibitions,



and at Commencement, with admiration and delight. If I might venture to rely upon the fixed impressions of those days, which yet fasten on my memory, as truths unaffected by youthful excitements, I should be tempted to say that we all listened to him on those occasions with the most devoted attention; and that the mellifluous tones of his voice fell on our ears with somewhat of the power which Milton has attributed to Adam when the Angel ended, so, that we awhile

“Thought him still speaking, still stood fixed to hear.”

I need scarcely add, that at the public exhibitions of his class, he took the first and highest part, and on receiving his degree at Commencement, he took also the first and highest oration, with the approval of all his class, that he was the worthiest of it, and that he was truly *princeps inter pares*. Honors thus early won and conceded, are not without their value or their use, as prognostics of an auspicious and brilliant day. Dr. Channing lived to justify all the hopes of those who were most ardently attached to him; and in the midst of that melancholy which necessarily accompanies the death of such, it is no small consolation, that he lived long enough to accomplish all the great ends of life, and that he left behind him a fame, spotless, and, as we trust, imperishable.

If these loose hints, thrown together in great haste, shall be of any use, it will afford me the most sincere pleasure, as an old friend and classmate of a man so justly revered.

I am, with the highest respect,

Truly yours,

JOSEPH STORY.

During his college life my father's animal spirits were remarkable, and he joined with eagerness and vivacity in all the festivities of social intercourse. His buoyant, gay, and genial temper bred happiness in himself and dif-



fused it among his companions. Such natures are twice blessed, like mercy blessing "him that gives and him that takes;" — yet excess was as foreign to his nature as to his morals, and he was as far removed from libertinism as from formalism. Of that happy conformation, so rarely found, in which the centrifugal forces of passion and the centripetal forces of asceticism are in balance, he moved easily on in the perfect orbit of duty. Many men are moral from principle, some from apathy and want of fervor; he was of the few who are moral from constitution. In the indulgence of his appetites he was temperate, and wasted no time in idle or dissipated pleasures. Rejoicing in the world about him, he sucked the honey without the poison of life. During his college life he drank no wine and lived abstemiously, perhaps too much so for his future health; and this, together with constant and exhausting application, at an age when his physical constitution was not thoroughly matured, laid the seeds of dyspepsia, from which he never entirely recovered. This did not, indeed, in after life impair his vigor or energy, but forced him strictly to diet, and forbade him the gratification of his palate.

The following anecdote, though it anticipates the course of his life a little in time, properly belongs to this place. Mr. George Wilson, in a letter to me in relation to my father, says, —

"I recollect, at my father's table, about the time he commenced the practice of the law in Salem, he was invited to take wine, as was then the custom, which he declined, begging that he might be allowed 'to taste the flavor of the glass only.' In those days, it being so remarkable for a gentleman to refuse a good glass of wine, a deep impression was made

on my mind by the circumstance. It serves to prove him one of the first and best kind of temperance reformers."

When we consider the condition of the college and of society in general at that time, his purity of life and of thought shows much the more strikingly against the dark background of infidelity and licentiousness. Dr. Channing, in speaking on this subject, says,<sup>1</sup>—

"College was never in a worse state than when I entered it,—society was passing through a most critical stage. The French Revolution had diseased the imagination and unsettled the understanding of men everywhere. The old foundations of social order, loyalty, tradition, habit, reverence for antiquity, were everywhere shaken, if not subverted. The authority of the past was gone. The old forms were outgrown, and new ones had not taken their place. The love of books and conversation was presumptuous and daring. The tendency of all classes was to skepticism. At such a moment, the difficulties of education were necessarily multiplied . . . The state of morals among the students was any thing but good."

It was, in a word, the time of Paine's Age of Reason.

Thus early in life he showed great versatility of powers. He was equally at home in writing verses or in the abstruse mathematics, for which he then had a fancy. He turned with ease from play to work, and was equally devoted to each for the time being. He was then also, as afterwards, remarkable for volubility of speech and tireless flow of conversation. To talk was his delight;—

<sup>1</sup> *Memoir of W. E. Channing*, vol. i. p. 60. Similar testimony as to the moral condition of the college is given by Hon. Judge White, who was then a tutor, in a letter to be found in the succeeding pages of the same work.



morning, noon, and night, — summer and winter he talked. In the debating societies and at the class meetings he took a prominent part, and was a fluent, clear, and enthusiastic speaker. Simple, ingenuous, and vivacious, he was a favorite in his class, and so bore himself, that despite his high standing, he aroused neither envy nor enmity in the breast of any one.

His devotion to study was very great. He literally consumed the midnight oil over his books. To such an extent was this carried, that often in "the dead waste and middle of the night," feeling drowsiness steal over him, he would go down to the college yard, and pump cold water on his face and head in order to revive himself, and then would return with renewed energy to his studies. In his Autobiography he says:—

"I was most thoroughly devoted to all the college studies, and scarcely wasted a single moment in idleness. I trace back to this cause a serious injury to my health. When I entered college I was very robust and muscular, but before I left I had become pale and feeble and was inclining to dyspepsia."

Such habits fully justify the estimate of one of his classmates, who used to say,—"When Story was in college, I knew he was one of those fellows, who would make a noise in the world."

In his reading at this time, he seems to have been omnivorous, rambling into all the by-paths of literature, and over the rich domains of the best English authors. The library of the university was a new-found world of delight, and in its alcoves he spent charmed and studious hours. Philosophy, poetry and essays seemed



to have been his favorite reading. He did not read idly and for pastime, satisfied if he had winged a dull hour, but earnestly and with his whole soul. Thus it was that he imported into his mind that various knowledge which enriched its natural soil, and afterwards made the dry rod of the law bud and blossom in his hands.

Time rolled on with easy wheels through this happy valley of his life, and when the four short years of college were over, he quitted with lingering steps the place which had become endeared to him by so many delightful associations. In his Autobiography he says:—

“My college life was to me very delightful as well as instructive. I there formed several intimate friendships, which have been continued with unabated sincerity down to the present day. I believe that those friendships were highly useful to me, not merely as sources of private gratification, and social intercourse; but they gave a vigor to my moral feelings, and strengthened those religious impressions of duty and those sentiments of honor, which are so important at the critical moment when a lad is passing from the feverish restlessness and unbridled passions of youth to the verge of manhood. I have some pride in saying, that I passed through this dangerous period, without a stain or reproach. I quitted college with regret; and shed many bitter tears in parting from scenes, which I could never revisit with the same familiar pleasure, and classmates, whom in the future I could never expect to see again gathered in the same groups, with the buoyancy of hope, and the vivacity of unsuspecting confidence about them. I have never since read Gray’s beautiful Ode on a Distant View of Eton College, without having my thoughts called back to the associations of those days with a deep and saddening feeling. I am now again an

inhabitant of Cambridge; and I never pass the walls within which I spent so many happy hours, without a mixed sensation of tenderness and melancholy; for they speak to me in the voice of departed times "departed never to return," and in the spirit of admonition of the sad inroads made by death among those who then graced its halls and guided the instructions of our Alma Mater."

## CHAPTER IV.

### STUDY OF THE LAW.

ENTERS MR. SEWALL'S OFFICE AT MARBLEHEAD—FEELINGS OF REGRET ON QUITTING COLLEGE—DIFFICULTIES IN THE STUDY OF THE LAW—"RESTLESS STATE 'TWINX YE AND NAY"—RAPTURES ON ROUSSEAU—DISGUST ON FIRST ENTERING INTO THE WORLD—PRAISE OF HIS FRIENDS—OPINION OF SOUTHEY, JUNIUS, KOTZEBUE, SCHILLER, AND THE GERMAN DRAMA—DELIVERS A EULOGY ON GENERAL WASHINGTON—WRITES "THE POWER OF SOLITUDE"—REMOVES TO SALEM—ANECDOTE ILLUSTRATING HIS SELF-FORGETFULNESS AND KINDNESS—SOCIETY IN SALEM—HIS POLITICAL VIEWS AND POSITION—CABALS AGAINST HIM—LETTER CONTAINING ANECDOTES AND REMINISCENCES OF HIM—LETTER STATING HIS POLITICAL AND RELIGIOUS OPINIONS.

THE brief years of college life having ended, it became necessary for him to choose a profession. His ambitious hopes as well as the constitution of his mind soon determined him to the study of the law. Accordingly, upon leaving Cambridge he immediately returned to Marblehead, and there opened his first law books in the office of Mr. Samuel Sewall, then a distinguished advocate at the Essex bar, and a member of congress; and afterwards Chief Justice of the supreme court of Massachusetts. It was not, however, without many a lingering look at the happy days which he had just past, that he returned to the dreariness of Marblehead. He felt with a pang the gates of youth shut down behind



him as he entered the narrow task-room of professional manhood. For a time he seems to have desired a literary career, and to have resigned these hopes reluctantly. He, who had dallied with the muses in the gardens of classic and English literature,

"And played with Amaryllis in the shade,  
Or with the tangles of Næara's hair,"

shuddered as he embraced the common law. In a letter to his friend, Mr. Fay, dated September 6th, 1798, immediately after quitting Cambridge, he says, —

"Conceive, my dear fellow, what is my situation, doomed to spend at least ten years, the best of my life, in the study of the law, — a profession whose general principles enlighten and enlarge, but whose minutiae contract and distract the mind. Ambition is truly the food of my existence, and for that alone life is desirable. Yet, hard lot! Those favorite studies, those peculiar pursuits by which I have fondly (however vainly) hoped to attain celebrity, are ravished from me, and I must consent to be a *plodder* in order to be what the world calls a *man*. Yet it is the part of cowardice to shrink, and of imbecility to hesitate. I have determined, and will execute."

In another letter, dated September 8th, 1798, addressed to Mr. Charles P. Sumner, one of his early friends with whom he particularly sympathized in matters of literature, and father of one of his pupils and most intimate friends in later life, he says, —

"I have begun the study of the law, and shall continue it with unremitting diligence; but a sigh of regret often accom-

panies my solitary moments,—a sigh, expressive of my ardent love of literary fame, and the impossibility of devoting all my attention to the object of my wishes. I candidly confess, that the hope of ‘immortality’ alone buoys me up, and if this hope should be destroyed, even should I remain unaffected by the meanness of mankind, all pleasure will have flown, and this world will appear ‘a dreary waste, a wild without a flower.’”

This feeling however, soon wore away, and no sooner was his decision to pursue the law as a profession perfectly fixed, and his mind occupied in mastering its principles, than he began to be enamored of its harsh and crabbed forms and rules. Accordingly, in a letter to Mr. Fay, dated September 15th, 1801, we find his tone changed, and he says,—

“You well know my love for my profession. The science claims me as a fixed devotee;—it rules me, and with my studious inclination, binds me more firmly to literary pursuits. Would to God this were my only ruling passion. But Love, like the pestilence, walketh in darkness and wasteth at noon-day.”

The difficulties against which every student at law was forced to contend, at that day, as well as the peculiar disadvantage under which my father commenced his study of the law, will appear from a passage in the Autobiography in which he describes his position. He says,—

“During my professional studies in Mr. Sewall’s office, I was left very much alone, and with no literary associate in my native town. I was driven, therefore, back upon my own resources, and I not unfrequently devoted for months more



than fourteen hours a day to study. Mr. Sewall's absence in congress for about half the year was also a serious disadvantage to me, for I had no opportunity to ask for any explanation of difficulties, and no cheering encouragement to light up the dark and intricate paths of the law.

"Beginning my studies in this recluse and solitary manner, I confess that I deeply felt the truth of Spelman's remarks, when he was sent to the Inns of Court for a similar purpose,<sup>1</sup> my heart like his sunk within me; and I was tempted several times to give up the science from a firm belief that I could never master it. The case was very different then from what it is now, in respect both to the plan of studies and the facilities to acquire the elements. Then there were few elementary books; now the profession is inundated with them. Then the student, after reading that most elegant of all commentaries, Mr. Justice Blackstone's work, was hurried at once into the intricate, crabbed, and obsolete learning of Coke on Littleton. Now there are many elementary works which smooth the path towards the study of this great master of the common law. Then, there were scarcely any American Reports, (for the whole number did not exceed five or six volumes,) to enable the student to apply the learning of the common law to his own country, or to distinguish what was in force here, from what was not. Now, our shelves are crowded with hundreds.

"Hitherto my pursuits had been wholly of a literary and classical character. I loved literature, and indulged freely in almost every variety of it to which I had access, from the profound writings of the great historians, metaphysicians, scholars, and divines, down to the lightest fiction, the enticing novel, the still more enticing romance, and

<sup>1</sup> The passage alluded to will be found in the preface to Sir Henry Spelman's *Glossarium Archæologicum*. It is as follows:—"Enisit me tamen sub anno altero (1579) Londinum; juris nostri capescendi gratiâ: ejus cum vestibulum salutassem, reperissemque linguam peregrinam, dialectum barbaram, methodum inconcinnam, molem non ingentem solum, sed perpetuis humeris sustinendam; excidit mihi (fateor) animus."



the endless pageantries and imaginings of poetry. You may judge, then, how I was surprised and startled on opening works, where nothing was presented but dry and technical principles, the dark and mysterious elements of the feudal system, the subtle refinements and intricacies of the middle ages of the common law, and the repulsive and almost unintelligible forms of processes and pleadings, for the most part wrapped up in black-letter, or in dusty folios. To me the task seemed Herculean. I should have quitted it in despair, if I had known whither to turn my footsteps, and to earn a support. My father had often told me, in the sincerity of his affection, that he should leave little property; that the most I could expect would be my education; and that I must earn my livelihood by my own labors. I felt the truth of the admonition; and it was perpetually whispered into my secret soul whenever I felt the overpowering influence of any discouragement. My destiny was to earn my bread by the sweat of my brow; and I must meet it or perish.

"I shall never forget the time, when having read through Blackstone's Commentaries, Mr. Sewall, on his departure for Washington, directed me next to read Coke on Littleton, as the appropriate succeeding study. It was a very large folio, with Hargrave and Butler's notes, which I was required to read also. Soon after his departure, I took it up, and after trying it day after day with very little success, I sat myself down and wept bitterly. My tears dropped upon the book, and stained its pages. It was but a momentary irresolution. I went on and on, and began at last to see daylight, ay, and to feel that I could comprehend and reason upon the text and the comments. When I had completed the reading of this most formidable work, I felt that I breathed a purer air, and that I had acquired a new power. The critical period was passed; I no longer hesitated. I pressed on to the severe study of special pleading, and by repeated perusals of Saunders's Reports, acquired such a decided relish for this branch of my profession, that it became for several years afterwards

my favorite pursuit. Even at this day I look back upon it with a lingering fondness, although many years have elapsed since I ceased to give it an exclusive attention. It is in my judgment the best school for the discipline of an acute and solid lawyer. While in Mr. Sewall's office, I also read through that deep and admirable work upon one of the most intricate titles of the law, Fearne on Contingent Remainders and Executory Devises, and I made a manuscript abstract of all its principles. I am not quite sure that it may not yet be found among my manuscripts."

I cannot help remembering, in this connection, the remark which Lord Eldon made to Wilberforce, when he was consulted as to the best mode of study and discipline for the young Grants to adopt in the law: "I know of no rule to give them," said he, "but that they must make up their minds to live like hermits and work like horses."<sup>1</sup>

During this period of his life, my father's mind was passing through that phase of struggle and vague aspiration, which lies between the manhood and youth of every man of genius.

"A restless state 'twixt yea and nay,  
His heart all ebb and flow."

He is full of indefinite yearning. What he desires, he can never distinctly state. He continually quotes Rousseau in his letters, and the peculiar doctrines of this great enthusiast seem to have deeply affected him. In a letter to Mr. Fay, dated September 6th, 1798, he says,—

"I perceive by a hint in your letter, that you have read

<sup>1</sup> *Life of Wilberforce.* Entry in Journal, April 17th, 1801.



Emilius. Pray write me your folio opinion of it. I know you admire it. Read his *Eloisa* and be crazy. Oh, Fay! conceive me in *Marblehead*, and you must know that I am wretched."

He is passionate, enthusiastic, at times greatly depressed, always very sentimental, and often morbid. He vaults from the deepest glooms into the highest hopes; for his natural vivacity and morbid sensibility alternately reacting upon each other, push him to as great extravagancies of joy as of grief. In the loneliness of *Marblehead*, with no companions of his own age to sympathize with him, and to conduct away the electrical currents of feeling which agitate him, he becomes surcharged with nervous excitement. He sighs constantly for the presence of friends, and in one letter he says, —

"I have not here a single companion, so that I am completely isolated. You may judge, therefore, how far my situation is susceptible of happiness. Solitude is enchanting, but it requires at intervals the society of friends."

Again, he says in a letter to Mr. C. P. Sumner, dated September 8th, 1798, —

"Fate condemns me to a solitary situation, while all my companions with whom in pleasant converse I have spent the midnight hours, are far distant. Life has no independent charms; in reciprocity consists all enjoyment."

This last thought, thus early expressed, affords a key not only to my father's social nature, but to that long series of generous labors for others, by which his life was so much distinguished.



In a letter to Mr. Fay, dated January 6th, 1801, he says, —

“My hours are alternately divided between the difficulties of study, and the intercourse of friendship, and are never passed in dull *ennui* or idle folly. Yet, my dear fellow, with the craving inanity of the human mind, I still exclaim, I am not happy. My throbbing heart can never be at rest. The visions of the future have not yet been discolored by the disappointments of the past, and I am alternately the veriest knight-errant in romance, and the most despondent monk in Christendom.”

This is the chafing of a young, sensitive nature when it first feels the stern limitations of life. Like every spirited youth, he stepped across the threshold of manhood, eager to realize that visionary future, which his imagination had painted in such enchanting colors. Pure in heart, rich in affection, and sanguine in fancy, he had looked forward to life as to an Eldorado paved with the golden sands of Romance. He found on it prosaic dust. The world encountered him as the cynic does the poet. He asked for bread, and it gave him a stone. His dreams of perfectibility were met by the cold sneer of criticism. His lofty hopes were opposed by the hard maxims of policy and experience. Where he had expected heroic friendships and generous self-sacrifice, he found worldly policy and competitive selfishness wrangling and appropriating all within their reach. He saw that the real and the ideal were two quite different things. The sentiments of poetry did not walk up and down the avenues of business, but lurked in happy secluded valleys. Practical Christianity, he perceived, was considered as wholly visionary; while theoretic

Christianity, (the ghost,) went about preaching in pulpits, and in the market-place. In his impatience he frets at the limitations and meanness of life. Like every generous youth, he would be a reformer, and tear from society its odious mask of hypocrisy, and its armor of selfishness. In letters written during the year 1799, the following, among many other similar passages, occur:—

“In life—good heavens what a word—how I fear lest like the crowd, I shall become an apostate from generosity and nature; ‘for man is naturally good.’ In life,—for we are yet on the threshold of existence,—I shall anticipate little pleasure, except in the participations of my friends. Let me with seriousness say, that I shall ever, I hope, be open in heart and action.”

Again,—

“I have long ceased to admire the world. Its manners and its sentiments are equally objects of my disgust and my detestation. I would fain indulge the delusion that youth is uninfluenced by its maxims, and that old age sometimes revolts from them. Though I had theorized on its depravity, and ought not to have expected pleasure, yet the mind fondly cherishes even in its despondency a latent hope that some glorious exception might justify its hopes.”

Yet again, in a letter dated June 21st, 1800, he writes,—

“I am told that the tinge of romance yet discolors my ideas, and that *real life* is a picture widely different from the imagery that now bewitches my fancy. What is all this but the calculating meanness of individual experience, which content to walk in the common road, knows not that flowers as well as thorns could blossom in the paths of life. The



truth is, man may be what he will, and consequently when ideas of the delusiveness of love, and the vanity of friendship, stamp the mind, the heart becomes regulated by other impulses than those of nature, and an artificial system assumes the aspect of infallible truth."

The following passage also occurs in a letter to Mr. Fay, dated January 6th, 1801:—

"I know not how it is, but the shackles of the world and its customs become every day more insupportable to me. Instead of viewing men merely as madmen, I perceive with too veritable an aspect that they are knaves or dupes. Scarcely any thing like principle can be discerned in their general conduct. If formerly the intimacies of friendship awakened my warmest feelings, they now are the end of all my hopes. I despair to advance among the crowd, when at every instant I must sacrifice integrity and falsify principle. The petty chicanery of worldly cunning is so detestable to my soul, that the doom of poverty is preferable to its guilty attainments."

The strong coloring which his mind received from Rousseau at this period, shows itself in every word he wrote. Disgust at the artificiality of life, and raptures on the claims of friendship and love, fill half his letters. He pours out his affection with a lavish heart, and indulges in the warmest expressions of it. It seems to intoxicate his brain. In him this was neither affectation nor flattery, but a natural exaggeration of the estimable qualities of those to whom he was attached, which was always a beautiful trait of his nature. He always overrated. He never believed in a base motive when he could avoid it. The constant dupe of designing persons, he was quick-sighted only to virtues.



On this subject he says, writing to his friend Mr. Fay, April 15, 1799:—

“Reading St. Pierre the other day, I was extremely affected with the justness and candor of an observation, which will meet sympathy in your bosom. ‘Flattery is not my vice,—if I use it, it is only to those I love,’ says that eloquent author. This has afforded me much matter for reflection. I have been sometimes told that I adulate; but it was only the overflow of my feelings, and only to those I loved with ardent sympathy. Susceptible minds can scarcely avoid the expressions of friendship and esteem, and in such what is generally a vice and the tribute of hypocrisy becomes a radiant virtue.”

The following extracts from letters written at this period, exhibit some of the young student's views of poets and politics. Speaking of Southey and his early opinions, he says:—

“The friend of man and of humanity, he has disdained to cloak his feelings under general observations. He perceives cruelty in its detail, and unmasks the monster in the spirit of righteousness. He has been denounced as the friend of anarchy, but to me his sentiments bear the stamp of truth, liberty, justice, and native integrity. Our degeneracy alone prevents us from perceiving his merit. As a poet he is *inter magnates*; as a politician, (as far as works speak,) equitable and humane in his principles; as a man, benevolent. I should say that the predominant qualities of his poetry were picturesqueness, sweetness of sentiment, and purity of diction. When I first heard of his epic, I was vehemently prejudiced against it. A modern epic, thought I, (such was the influence of early prejudice,) must necessarily be tame and jejune. But I read, and the change was instantaneous. *Veni, vidi, victus fui.*

He is now my favorite. His miscellaneous poems are full of various excellence.

In another letter, he says, —

“I have lately perused the masterly writings of Junius. A statesman who professes the principles of freedom, the legislator who contemplates the benefit of mankind, and the philosophic citizen of the world ought to make this a *vade mecum*. Yet because he has attacked the English administration with equitable violence, he has been branded as a disorganizer; and because he disdained the versatility of popular sentiment, he has been declared an apostate. Such, my dear fellow, are the epithets bestowed by partisans on the moderate and just, who think with coolness and decide with alacrity. You shall have an instance of public prejudice in a confined circle — and I the little hero of the tale. A gentleman in Boston, asking in company what were my political sentiments, Federal or Jacobinical, was answered, — Neither, but that I was a person *sui generis*. ‘He that is not with us, is against us,’ replied he, and I was accordingly dubbed a political heretic.”

It is proper here, to say, that his opinion of the letters of Junius became entirely changed in after life.

The next letter was addressed to a friend and classmate, who was then studying at Berlin: —

TO THOMAS WELSH, ESQ.,

Marblehead, October 19, 1799.

MY DEAR FRIEND:

I have lately heard much, and read more of the praise which has been bestowed on the literati of Germany. Wieland, Schiller, and Goethe, are not unknown to me in their works. Kotzebue is the presiding deity of our theatre. The rage for his plays is unbounded. The development of the bolder and fiercer passions alone seems now to command the



attention of an American audience. All must be "wrapt in clouds, in tempest tost;" alternately chilling with horror, or dazzling with astonishment. This mania, however, is not peculiar to us. The polished Cumberland and the masterly Sheridan have already been driven from the London theatres by the northern poets. Shakspeare himself might tremble for his supremacy, had not he fortunately created the sportive "Ariel" and the ghost of Hamlet's father. From the translations of Schiller and Kotzebue, which I have read, I do not hesitate to declare the former infinitely superior in poetic conception and delineation to his applauded rival. The German plays acquire their effect from the strength, more than the justness, of their execution; from their power to excite surprise, rather than their expression of the tender passions. Indeed, they are by no means my favorites. Their plots are for the most part ill-contrived and irregularly supported. As a whole, they fail in effect; but I could select passages which are sublime and pathetic.

I regret exceedingly my ignorance of the German tongue. Translations seldom convey the spirit of the original, and it is only through them that I can acquire any knowledge of your Northern planets. At some future period, I hope to remove this disability; yet I perceive, that "*hoc opus, hic labor est.*" Indeed, except with an independent inheritance, no American can spare time for the cultivation of those literary pursuits, which are the delight of a superior intellect. When I view the immensity of science, which yet remains wholly unexplored by me, I confess my resolution is staggered; and it requires all my philosophy to overcome my despondency.

Last winter several pieces appeared in the poetic department under the signature of "A \* \* \*" and "Henry." To confess the truth they excited much attention and more surprise. You will not be alarmed when you learn, that it was continued with some interruption for six months. The fact was, that an "Address to Winter" appeared over the signature of "A \* \* \*," which, from the peculiarity of style and sentiment



I presumed was the production of Miss S. M., a young lady whose merits you may have heard me mention, and whose attainments are equalled by her genius. With this idea and the persuasion that I might remain wholly unknown, I addressed her in return. The correspondence was continued, and after six months' experience I remain in greater doubts than ever of the real author of the female pieces. In my leisure hours I still continue to soothe my languor and melancholy with the sportings of the Muse, and the fictitious "Henry" often usurps the poet's corner with the real effusions of Story. In the mean time I have composed a poem of about fifteen hundred lines, on the "Power of Solitude." As the *cacoëthes scribendi* is not more catching than that of publication, this may possibly not expire in manuscript.

I am now engaged with the avidity of a man who relies on law for his livelihood, yet with the *sang froid* of one to whom it is a secondary consideration, in the perusal of Coke and the Reporters. Law I admire as a science; it becomes tedious and embarrassing only when it degenerates into a trade. I regret the necessity of any profession, because it infringes on those studies which a citizen of the world would like to pursue. If you are not satiated with the prominence of my egotism and vanity already, you must at least possess in a high degree one great qualification of friendship,—patience. You shall not, however, have one word of politics from my pen. It is a subject which, in its present details, is too important to arrest attention and to excite curiosity.

By the way, Mrs. Morton has lately published a work called, "The Virtues of Society." It is certainly superior to her "Beacon Hill," and worthy of her former reputation. The Virtues of Society are illustrated in the tale of the heroic Lady Harriet Ackland, a woman whose conduct in the American war has received universal applause.

I am, my dear Welsh,

Your unaltered Friend,

JOSEPH STORY.

In February, 1800, General Washington died. My father was deputed by the town of Marblehead to deliver a eulogy on the occasion, in pursuance of the recommendation of Congress and the General Court of Massachusetts, that eulogies should be delivered in all the towns. This was somewhat of an honor for so young a man, and shows the consideration in which he was held by the town. The *Columbian Centinel* called this production "an elegant Address," but my father condemned it as "poor and in bad taste." It was printed, and though written in the bombastic style of the time, was considered as a very creditable performance. Judge Sewall, in acknowledging the receipt of a copy, says, —

"I have read it with a great deal of pleasure. I doubt not it will give you reputation, and it by no means needs an apology for haste or inconsiderateness."

During this period he composed a poem, entitled, "The Power of Solitude," which was afterwards published, and which, in one of his letters, dated December 26th, 1798, he calls, "the sweet employment of my leisure hours." I shall have occasion to refer to it hereafter.

After remaining in Mr. Sewall's office a little more than a year, he removed to Salem in January, 1801, upon the appointment of Mr. Sewall as one of the Justices of the Supreme Court of Massachusetts, and entered the office of Mr. Samuel Putnam, who afterward occupied a seat upon the same Bench.

"While he was in my office," says Mr. Justice Putnam, in a letter dated May 28th, 1846, "although he read much, yet we talked more; and I believe in my heart, that he even then

did the greater part of it. I had a pretty full practice, and his regular course of reading was frequently interrupted by the examination of the books, touching the cases which were offered for my consideration, and I have no doubt that my clients were greatly benefited by his labors in my service.

"My office was then in my dwelling-house, and he was in the daily and familiar intercourse with my family, always manifesting the most lively interest in our concerns. 'Mair by token,'—one of my daughters got a piece of China-ware in her throat, and seemed to be in imminent danger of suffocation. We could do nothing for her relief. He rushed out of the house and ran bareheaded through the streets with the speed of a race-horse, nearly half a mile, for a physician, who arrived in a few moments after the child was happily relieved by a strong effort of nature. Your father was at the doctor's house with the tale of her distress in about the time that some men (who always consult their own appearance and convenience) would have taken to put on their hat and gloves. The event was of thrilling interest to us; and you may imagine that the *race*, which was at midday, attracted much attention from those who saw it. In point of fact, your father was as much distinguished by never-failing kindness as by his legal attainments."

No anecdote could better illustrate that entire self-forgetfulness and *abandon* of action, which was a conspicuous trait in his character. Thus energetic, impulsive, and careless of appearances, whenever any worthy object was to be gained or any kindness to be conferred, he continued throughout his life. He was thoroughly simple and genuine in all his actions, and I do not believe that a consideration of "what the world would think" ever influenced him.



His removal to Salem did not render his position more agreeable. The feelings of the two parties of Federalists and Republicans, into which the country was then divided, were very bitter and excited. The lines of distinction were drawn with even personal animosity, and there was almost no social intercourse between those who differed in politics. Although my father took no active part in public affairs, yet as he was known to incline to the Republican party, then in a minority in Salem, he was looked upon by the Federalists, who composed the principal part of the wealth and talent of the town, with doubt and distrust, as a person entertaining dangerous views; and he at first was *tabooed* from the society of those with whom, upon general topics, he would have had the most congeniality. Besides this, he held other opinions which were then stigmatized as ultra. His Unitarian views, for instance, were considered by many as closely allied to atheism; and as he was uniformly independent in the expression of them, there were not wanting Pharisees, who passed him by on the other side. But his steady devotion to the law, and his ingenuousness of character soon began to win him friends. Many, who objected to his politics, could not resist his manners. Those who feared his atheism could not but acknowledge that he was honest and pure of life. Prejudice gave way by degrees, but slowly.

There was then a number of small societies in Salem, composed of both sexes, and formed with a view of promoting social intercourse, under the fantastic names of "The Moscheto Fleet," "The Antediluvians," "The Sans Souci," and "The Social Group," of one or more of which he became a member. The harmony of these cir-

cles was greatly disturbed on one occasion by a communication printed in the Salem Gazette, in which it was asserted that they were "schools where decency and modesty were laid aside, and Deism and Wolstoncraftian principles were the order of the day," and one lady of most exemplary character and conduct was specifically alluded to. These assertions naturally created great excitement in the town, and obtained some credit. As some of the persons alluded to were personal friends of my father, he came forward at once as their champion, and in a printed answer denounced the author of the calumny. The attack was repeated, and at one time there was danger of serious consequences. But it finally ended, as it began, in words.

The following letter, written to Mr. Fay, and dated February 28th, 1801, refers to this attack, and gives us a glimpse into the little world of Salem cabal.

"The whole charge is a most villanous falsehood, ungraced by a single shadow of truth to disguise its virulent animosity. Indeed, its falseness was so glaring, that a response was judged unnecessary. No doubt was then entertained that the writer was determined to render my social position disagreeable. Since then continual reports have circulated of my being a deist, a defender of suicide, an eccentric phenomenon, a violent Jacobin, a champion determined to diffuse my principles with all the vehemence of proselytism; in short, a thousand ridiculous and false assertions were made, which would alternately excite your pity and contempt. You, who know the virginity of my life, will readily conceive how little such aspersions cost my feelings; but I was vulnerable through others, and although I have studiously avoided politics, (for Salem is altogether of the Essex junto,) religion and paradox, there have been moments



when indignation has silenced prudence, and I have whispered that 'I did not think with these illiberal Jesuits.' It will perhaps be a matter of astonishment to you, how such unfounded reports could gain a momentary credit. There is a spirit of jealousy abroad, which, fed by spleen and disappointment, preys equally on the innocent and the guilty. The great are not too high for its attacks, nor the humble too meek for its appetite. The ladies of 'The Moscheto Fleet,' as they term themselves, 'The Sans Souci,' and 'The Social Group,' are all within the circle of my intimate acquaintance. They are distinguished in Salem as models of propriety of conduct and modesty of demeanor, and so far from approving such principles as public accusation has fixed on them, are unanimously opposed to them. I am almost raving with indignation at such infamous denunciation. I have however, been more and more noticed, and received in company with more welcome than ever. A strong sensation of indignation has awakened the gentlemen of Salem to a bold defence. They see, at length, that slander always assumes an impudence commensurate with its improbabilities. It is very probable that all will not end here. I expect every day a direct attack on myself."

The following extracts from a letter addressed to me by one of my father's female friends, to whom he was warmly attached, and intimately known in early life, contain some very interesting reminiscences and illustrations of his character, as a young man:—

"Every anecdote I remember of your father shows his high principles or his kind feelings. One evening, while we were playing whist at a small party, I took up a card to which I had no right. He saw it, and said, — 'L., that card does not belong to you. You must lay it down, or I leave the table.' On our return home, I said to him, — 'Why were you so



particular that I should lay down that card?' 'Because,' he answered, 'you had no right to it, and I will never countenance injustice or unfairness in the smallest matter. I shall never see you do any thing in the least improper, without expressing my disapprobation.'

"The kindness of his disposition was unequalled. Love was the ruling principle of his soul. Justice was a virtue he highly estimated, but benevolence was more congenial to his nature.

"He was a very handsome young man, was always dressed like a gentleman, and had the air and manners of one. He was a great and general favorite with young ladies, who always felt flattered by his attentions. This occasioned him the envy of some of the gentlemen, and was doubtless the cause of many of the annoyances he met with. I have seen him in company when they would treat him with marked neglect and refuse to shake hands with him. But this had no effect on him. He preserved his serenity and cheerfulness, and any one who could interpret his feelings from his countenance saw that he pitied and forgave them. Anger was a passion which could never gain admittance to his breast. He was always animated in society, — sometimes gay, but never boisterous. In all my intercourse with him, I cannot recollect that he ever said or did any thing I could have wished unsaid or undone. Perfect propriety was one of his distinguishing traits. In short, when I seek for his faults, I can find none.

"He possessed great personal courage and presence of mind. Once as we were driving from Marblehead in a dark evening, a thunder-storm came suddenly up. He was fond of driving very high-spirited horses, and had one at this time. It was so dark that we could only see the horse during the flashes of lightning, which were so sharp as to frighten the animal extremely. We were in great danger, but he appeared so perfectly calm that it was difficult to realize how great it was.

"I was speaking to you the other day of the ease with which he wrote poetry. I recollect one instance of this readiness. It was common in those days, if any gentleman who had a talent for versification was present at our little parties, to request him to write extempore verses upon a given subject. One evening, when your father was sitting with me and others at a table, I said to him, — 'Come, write me a poem.' He answered, — 'I have no paper.' 'No matter,' I rejoined, 'here is a perfectly clean white handkerchief, write upon that.' He took it, and, without leaving the table, returned it shortly after with one whole side of it covered with verses, which he had composed on the spot. I forget what they were, but we all sincerely thought them excellent. He wrote them with as much apparent ease, and quite as rapidly, as he would have copied a page from a law book.

"I do not believe an impure thought ever sullied his mind. He was frank and confiding, and used no concealments, for he had nothing in thought or action he wished to conceal. He despised equivocation and deception. The same confidence could be placed in his word as in a solemn oath. In short, I do not believe a purer mind ever inhabited a human body. He took no interest in calumny or gossip, and if ever conversation of this character was addressed to him, he was evidently uneasy, and changed the subject immediately. Though his sensibilities were acute, and his passions and feelings strong, I never saw him when he was not under the guidance of reason. His was truly a most noble character, — generous, brave, liberal in every respect, high-minded, and with the nicest sense of honor. His feelings were strongly enlisted in politics, but he would sooner have seen his party annihilated than have said or done an unjust or untrue thing to have sustained it. He had no bitter or angry feelings towards his opponents. He respected the right of private judgment, and thought it the privilege of every man to sustain it by fair and energetic measures. Even *you* may think I am drawing an exaggerated picture of him, — but it is not so.



In looking back on his character with the strictest impartiality, I assure you I am convinced that I have not bestowed upon him a single praise to which he was not entitled. I often heard people at that time say, that they did not like him, but never knew a single accusation made against him, except that he was a democrat. He was truly a model for a young man. Vice was odious to him; Virtue the goddess at whose shrine he worshipped,—and never had she a more sincere or devoted votary. In early life he had to contend against great injustice and strong prejudices. In mature life he received the rewards he so well merited.

“ Although I have written you a long letter, yet I have no doubt, I have omitted much that I ought to have said in your father's favor. When I was young, I was very intimate with him, and now, that time has destroyed the enthusiasm of youth, and judgment has been matured by experience, and age has brought me so near to the end of my journey, that truth and reality are the only objects looked upon with pleasure and satisfaction, your father's character appears more estimable than when the magnifying glass of youth and enthusiasm converted even small excellencies into exalted virtues. It is a great satisfaction, that early in life I was able to appreciate such a character, though then beset by the shadows of prejudice; and now that the world has done him justice, my triumph is complete.”

The following extracts from a letter dated March 24, 1801, giving his views upon politics and religion, speak for themselves.

“ It has been frequently asserted, that my political opinions are Jacobinical. This I utterly deny. I respect the constituted authorities of my country as much as any man. I



venerate the constitution of my country as the grand palladium of our rights and liberties. I detest the arts and designs of ambitious demagogues, and as far as my feeble influence has extended, have unhesitatingly opposed their injurious maxims. At the same time, I am free to acknowledge, that 'all difference of opinion is not a difference of principle.' Washington, Adams, Pinckney, Pickering, and other illustrious men, who are supposed to be the touchstones of party, have always received my unreserved public approbation. The late administration has always been the theme of my praise, though in some individual measures my judgment has differed from that of more enlightened statesmen. Yet I must also declare, that I have never for a moment believed Mr. Jefferson to be an enemy to his country, nor to my mind has his conduct ever been substantially proved *criminal* in any degree. Thus far, sir, you may judge of the truth of the accusation, that my principles are Jacobinical.

"You shall not, sir, have reason to reproach me with a diminution of frankness and truth on a more delicate and complicated subject. It has been my misfortune, but not my crime, to have once entertained doubts respecting Christianity. This has ever been viewed by me as an unfortunate circumstance, to remove which, I have labored and read with assiduous attention all the arguments of its proof. I have been accused of a desire to propagate infidel principles and irreligious doctrines. This, also, I declare grossly false. I have never been an infidel, and so far from wishing to spread such opinions, have always envied the happiness of those who had no doubts. I do not recollect ever arguing at any time since I quitted the university concerning religion, and believe that it is beyond the power of malice to adduce a single instance in which I have endeavored to fortify irreligion. I verily believe Christianity necessary to the support of civil society, and shall ever attend to its institutions and acknowledge its precepts as the pure and natural sources of private and social happiness.

The man who could subvert its influence will never receive countenance from me, though ingenuous doubt shall ever be protected as a *misfortune*, but not a *crime*.

"Let my moral conduct be the pledge of these assertions. If my practice have not been uniform with these sentiments, I am willing to fall. I do sacredly defy any one to produce one instance of a breach of moral duty, in action, word, or opinion. Truth has ever been my darling desire, and virtue my highest ambition. Excuse my vanity, sir, in these assertions, but so much has been said and so little proved of me of late, that justice to my own feelings demands, that I should not hesitate to vindicate myself. Unfortunate it is for the young to be accused, but more unfortunate, if obliged to be their own defenders."

The doubts here alluded to, were engendered by the struggle of his nature with the Calvinistic tenets in which he was educated. His moral sense was not satisfied with a theory of religion founded upon the depravity of man, and recognizing an austere and vengeful God; nor could he give his metaphysical assent to the doctrine of the Trinity. All, who think earnestly and deeply on religious questions, must at some time pass through a mist of skepticism. Nor is any faith wholly secure, which has not been inwardly assailed and stormed by doubt. Only superficial natures take things entirely on trust. To every sincere and earnest mind, there is a passage from the unreasoning creed of childhood, imposed by custom and association, into the individual, inwardly determined faith of manhood, which is dangerous, difficult, and stormy. Through this strait of experience my father passed. He struggled sturdily with himself. In the

doctrines of Liberal Christianity he found the resolution of his doubts, and from the moment that he embraced the Unitarian faith he became a warm and unhesitating believer.



## CHAPTER V.

### LIFE AT THE BAR.

HIS HABITS AT THE BAR—HIS SUSCEPTIBILITY—IS BETROTHED TO MISS OLIVER—HIS REPUBLICANISM—IS APPOINTED NAVAL OFFICER—LETTER TO MR. WILLIAMS—DELIVERS THE ORATION ON THE FOURTH OF JULY—POETRY—PUBLISHES "THE POWER OF SOLITUDE"—CRITICISM ON THE POEM—EXTRACTS FROM IT—PUBLISHES A SELECTION OF PLEADINGS—HIS MARRIAGE—DEATH OF HIS WIFE—ANECDOTE OF THE CASE OF RUST v. LOW—HIS MANNER AT THE BAR—STUDIES ASSIDUOUSLY THE FEUDAL LAW—ANECDOTE OF HIS ARGUMENT IN A CASE IN NEW HAMPSHIRE.

"In July, 1801, my father was admitted to the Essex bar, and opened his office in Salem, rather because, as he says, he knew not where to go, than because he anticipated any success in that place. In his autobiographical letter to Mr. Everett, he says,—

"At the time of my admission to the bar, I was the only lawyer within its pale, who was either openly or secretly a *democrat*. Essex was at that time almost exclusively federal, and party politics were inexpressibly violent. I felt many discouragements from this source. But after a while my industry and exclusive devotion to my profession (and they were very great) brought me clients, so that, in the course of three or four years, I was in very good business and with an increasing reputation."

Of the heated politics of that time, and of his first

progress in his profession, he gives the following account in his Autobiography.

"To young men with my political opinions the times were very discouraging. My father was a republican, as contradistinguished from a federalist, and I had naturally imbibed the same opinions. In Massachusetts, at that period, an immense majority of the people were federalists. All the offices, (with scarcely an exception, I believe,) were held by federalists. The governor, the judges, the legislature were ardent in the same cause. It cannot be disguised, too, that a great preponderance of the wealth, the rank, the talent, and the civil and literary character of the state, was in the same scale. Almost all the profession of the law were of the party. I scarcely remember more than four or five lawyers in the whole state, who *dared* avow themselves republicans. The very name was odious, and even more offensive epithets (such as Jacobins) were familiarly applied to them. The great struggle was just over between Mr. Jefferson and Mr. Adams, and the former had been chosen to the Presidency. The contest had been carried on with great heat and bitterness; and the defeated party, strong at home, though not in the nation, was stimulated by resentment, and by the hope of a future triumph. Under such circumstances, there was a dreadful spirit of persecution abroad. The intercourse of families was broken up, and the most painful feuds were generated. Salem was a marked battle-ground for political controversies, and for violent struggles of the parties. The republican party was at first very small there; and its gradual growth and increasing strength so far from mitigating added fuel to the flame.

"Such was the state of things at the time when I came to the bar. All the lawyers and all the judges in the county of Essex were federalists, and I was the first who was obtruded upon it as a political heretic. I was not a little discouraged by this circumstance, and contemplated a removal as soon as



I could find a better position or prospect elsewhere. For some time I felt the coldness and estrangement resulting from this known diversity of opinion; and taking as I did, a firm and decided part in politics, it was not at all wonderful that I should be left somewhat solitary at the bar. Gradually, however, to my surprise, business flowed in upon me; and as I was most diligent and laborious in the discharge of my professional duties, I began in a year or two to reap the reward of my fidelity to my clients. From that time to the close of my career at the bar, my business was constantly on the increase, and at the time when I left it, my practice was probably as extensive and as lucrative as that of any gentleman in the county. Indeed, I contemplated a removal to Boston, as a wider sphere, in which I might act with more success; and I was encouraged to this by retainers from that city in very important causes.

"Let me here do justice to a gentleman, whom I have always respected with the most unfeigned sincerity. I have spoken of my peculiar situation at the bar, by which I do not mean that I was treated by any one with harshness or unkindness; far from it. But I was solitary in my political opinions, and therefore in a good measure excluded from those intimacies, which warm and cheer the intercourse of the profession. I wish to speak of one then very eminent at the bar, and still, I thank God, living in the maturity of his reputation. I mean Mr. William Prescott. He was a decided federalist, and at all times one of the ablest and most accomplished of the federal leaders. A man of more chivalric honor, of more probity, sound sense and discretion, I scarcely know. From the moment I came to the bar, he treated me with unhesitating kindness and respect; and when such occurrences were rare from other quarters, I constantly received from him invitations to the parties at his house, as if I belonged to the circle of his own friends. This was kindness when it was useful, and when it was felt, and when, to say the least, it would in public estimation, have



been quite as much to his advantage, if he had abstained from such civilities. I have never since ceased to remember this unsought and unbought token of his respect. And I have never since had occasion, even in the bitterest periods of party spirit, to know any diminution of his regard or friendship. It is my pride to count him among those choice friends, whose regard would flatter my pride, and whose censure would infuse the most serious doubts into the estimate of my own conduct."

The politics of my father were not such as a merely ambitious man would have chosen. They exposed him to contumely and offensive personality, and rendered him very unpopular in the town and state where he lived. Had he been prompted by ambitious motives, he would have been a federalist. But he could not be false to himself. His ardent temperament, his generous, hopeful nature, his love of humanity and freedom, all conspired to make him a republican. Pure of purpose, noble and disinterested, he mistook declamatory professions of patriotism and love of the people, for real enthusiasm for the country's good. If this be a mistake, it is one which every generous young heart easily makes.

"Artless himself, he thought the world so too,  
Nor feared the vices which he never knew."

Youth is as naturally democratic as age is conservative. It believes in the possibility of realizing its theory and romance. His democracy was a visionary Utopia, colored by fancy, and founded on faith in man. It was not a mere pretence to be used as a stepping-stone to office. With his nature, it would have been impossible for him not to be a republican. Often in speak-

ing on this subject, I have heard him say,—“I like as much to see a young man democratic, as an old man conservative. When we are old, we are cautious and slow of change, if we have benefited by experience. When we are young we hope too much, if we are generous and pure.” Had not his principles been firm, he might have yielded to the many influences exerted upon him, as soon as he actually engaged in politics. But neither these, nor the misrepresentation and slander to which he was exposed, had any effect to deter him from a course sanctioned by his best judgment, and accompanied by a consciousness of pure and disinterested motives.

At this time Judge Sewall was a federalist, and strongly opposed to my father on account of his republicanism. But on one occasion at a dinner party, while discussing his course with Chief Justice Parsons, he said,—“It is in vain to attempt to put down young Story. He will rise, and I defy the whole bar and bench to prevent it.”

Of his habits and practice in Essex, Mr. Justice Putnam in the letter before quoted, says,—

“As soon as he left my office he was admitted to the bar of the county of Essex; and I must say one word of the faithful manner in which he practised with us there. The habit of that bar was to disclose freely to the adverse counsel the points which were to be controverted or admitted, whereby much expense to clients was saved. What, out of court, was agreed to, was always admitted on trial, and by this means, much trouble and expense of witnesses were prevented. No traps were set, but the debatable ground was maintained with as much earnestness as was consistent with good breed-

ing. These agreements were uniformly verbal, but were always performed; and in all this your father well played his part."

During this period, my father was devoted to the society of the gentler sex, and was continually involved in tender passages of love and sentiment. His extreme susceptibility of heart kept him in a constant ferment, and angels seemed to look upon him from the eyes of every pretty woman. Bright glances and rosy lips he could not resist, and endless were his defeats and surrenders to the tender passion. His leisure moments were employed in writing love songs, full of rapturous exaggerations or sentimental laments. He accused destiny of every kind of extraordinary measures, and all the graces and muses conspired in his imagination to adorn the 'goddess' of the moment. But after "bending at many a shrine," his affections became permanently interested in Miss Mary Lynde Oliver, a refined and accomplished woman, of a romantic and gifted intellect, to whom he was betrothed in the latter part of the year 1802. She was the daughter of the Rev. Thomas F. Oliver, (who was the son of the Hon. Andrew Oliver,) and of Mrs. Sarah Oliver, daughter of William Pynchon, Esq., an eminent ante-revolutionary lawyer. My father now looked forward with a feeling of certainty to that domestic happiness, for which his aspirations are the burden of almost every letter written before this period. In a letter to Mr. Fay, dated November 8th, 1803, he says, —

"The pursuits of business to obtain a competence and bind me in the enchantment of matrimony, can never blunt



my social feelings, nor erase from my mind the *dulces amicitias*. True greatness is as seldom found as true genius. The affectations and fashions of puppets make up the raree show, and are calculated only for an evening's entertainment. Blest in a few friends, with love constant and pure, I crave not the splendor of ambition, but am willing to relinquish the bustle of the crowd for literature, love, and tranquillity."

The prejudices, with which he had to contend in Salem, on account of his political tenets, induced him at this period to plan a change of residence to some place, where he might practise his profession without irritation from the animosities of party strife. At one time he contemplated removing to Portsmouth, and at another to Baltimore. But his increasing reputation and practice, as well as the chains of love, bound him too closely to Salem to be easily broken. In allusion to these intentions, he says, in a letter to Mr. Fay, dated June 11th, 1804,—

"With respect to my removal to Portsmouth, I am hung like Mahomet's coffin, betwixt earth and heaven. My situation here grows daily better, and I have less power to contend against the pleasure of being near Mary. I suspect my project will be overturned by delay. Salem will probably prove to me as Capua to Hannibal."

During the year 1803 he was appointed to the station of naval officer of the port of Salem. He declined, however, to accept the appointment, being persuaded that it would interfere with his professional prospects. His letter of declination was as follows:—

TO HON. G. DUVAL.

Salem, March 30th, 1803.

SIR:

I had the honor to receive a letter yesterday under the date of the 14th inst. from the comptroller's office, announcing my appointment as naval officer of this port. I beg leave to express my sincere gratitude for this favor, at a time when, from my years, I could not have anticipated any notice of a public nature. To one just entering life without patronage or support other than what must be derived from juridical pursuits, and at a period, when persons older in the profession are so numerous as to absorb almost all lucrative business, it was a circumstance peculiarly grateful. If the extreme degree of virulence with which I have been persecuted, in a county where all the judges and lawyers are pertinaciously federal, and the manifest attempts to close against me the doors of professional eminence, be added to these considerations, you will readily perceive that there exist great inducements for me to accept the proposed office and thereby secure to myself a moderate independence and freedom from oppression. But, sir, after mature deliberation, I beg leave to decline the appointment, though I confess it cuts me off from a resource which would be peculiarly welcome. In doing this, a sense of duty and of high respect for the position induces me to request your patience to a succinct statement of the motives of my conduct.

A belief that a representative government is the wisest and best on earth, that its institutions are the most favorable to the liberties and rights of men, and admirably adapted for the permanency of civil happiness has been the leading principle of my life, and has fortified me in the determination to act upon it on all occasions. Hence, though young, I have suffered no small portion of abuse, and combated no small portion of oppression. Deeply as this situation was to be regretted, since from the complexion of political affairs it



became inevitable, I preferred an abandonment of my interests to any equivocation in my actions. If we are unwilling to encounter these sacrifices, our political convictions are but empty pretensions.

Two objections now present themselves against my acceptance of the naval office. The one grounded on professional considerations, the other on motives of utility. As to the first, I revere my profession, as employing the noblest faculties of the human mind and systematizing its boldest operations. Though I may meet with obstacles from political hostility, it would be with real regret, that I should quit it. The naval office here cannot yield more than a moderate competence, and even if that should exceed for some years my professional emolument, it would eventually leave me without any advancement in property or respectability. If, therefore, I should abandon the forum, I should still be a dependant; and I fear that though there may be no incompatibility, yet the incidental duties of the office would sometimes interfere with my legal studies, and insensibly lead me aside from them.

As to the other objection, my friends are pleased to express a fear that I can be less useful to them and to republicanism in that station, from the presumed influence of office upon opinion. On this subject I can say nothing; my services are always at the command of my country. But a farther ground presents itself to me, that no republican should hold a sinecure, and were I able to perform the duties of the office, yet as they would only be a secondary object, I might be tempted to deviate from a strict discharge of them.

Such, sir, are my reasons for declining, and I hope they may be deemed satisfactory. An acceptance would have freed me from the embarrassment of dependence; a declination will not, I trust, leave me without support.

I have long had a desire to migrate southward, in order to find a situation in which I should have only to compete with the ordinary obstacles of my profession. In your leisure



should you recollect any situation favorable to my views, the information would be grateful to me.

In closing this communication, I ask your indulgence, for its length, and, beg permission, to express my profound veneration for the present administration. May they never regret that modern degeneracy has rendered ineffectual their patriotic endeavors.

Wishing you health to enjoy the blessings you have contributed to bestow, I have the honor to be, sir,

With high consideration,

Your most respectful servant,

JOSEPH STORY.

The following letter, written at this time to a friend and classmate, who was engaged in the study of the law at Baltimore, will show the views and feelings of my father on several interesting points.

TO MR. NATHANIEL WILLIAMS.

Salem, June 6th, 1803.

MY DEAR FELLOW:

Your letter reached me in due season, and gave me most agreeable sensations. The intimacies of our youth, the similarity of our sentiments on most subjects, and the literary taste which distinguished you at all times, render such a favor peculiarly interesting. Of all the friendships which soothe the soul in this world, there are none so permanent, so powerful, and so *unique* as those nurtured in our early years and cemented by a frank intercourse before the soul could dream of evil. Such is the sensation with which I now address you, as the early friend in whom my feelings may repose and my confidence be secure.

You have so often apologized for negligences by the plea of indolence, that it has grown to be a staple commodity,

which sells at a uniform price, and is equivalent to the general plea of "business." Neither (you know from *legal* books) is allowed as a *justification*, though both may go in mitigation of damages; however, my dear fellow, you and I will not quarrel about the trifling parade of correspondence. We know the feelings of each other, and though Alps rise between us we cannot doubt. For my own part, I am free to acknowledge, that however dear your letters will always be to me, your silence will never alarm, nor your absence cool me. "Absence," says the sagacious Rochefoucault, "destroys trifling intimacies, but invigorates strong ones." One only wish breathed from my soul shall still accompany you wherever you go, the wish that you may be equally dear to yourself and your country.

Your account of Baltimore charms me. I have long had a desire to sojourn in some southern clime, more congenial with my nature than the petty prejudices and sullen coolness of New England. Bigoted in opinion and satisfied in forms, you well know that in ruling points they too frequently shut the door against liberality and literature. A man who will hazard a noble action is not less exposed than certain notorious saints of old. Indeed, if I mistake not, the same spirit under different forms is revived, though I have good reason to believe we have no *witches* amongst us. Could I obtain any respectable situation in your pleasant climate and hospitable city, I hardly know how I could refuse it.

You appear to dwell with delight upon the ladies of Baltimore. Depend on it, my dear fellow, from them must arise our purest sources of enjoyment. Ambition may be gratified in the forum or the senate, but, as Goldsmith pleasantly says on another occasion, peace, hope, and joy dwell with the *loves* and the *graces*. You know that I have borne no inconsiderable toils and dangers of the heart, and though hardly a veteran, I am not unmindful of its evils. Romeo says, —

"He jests at scars who never felt a wound."



Take the hint, and may you repose hereafter in the arms of affection with the same satisfaction, tranquillity and delight that I do.

My situation is pleasant here so far as it respects friends. The whole republican party are my warm advocates. Federalism has persecuted me unrelentingly for my political principles, but as my life has been sacredly pure, they do little else than accuse me of "being a Bonaparte in modesty and ambition." Convinced every day more and more of the purity of the republican cause, and believing it to be founded on the immutable rights of man, I cannot and will not hesitate to make any sacrifice for its preservation. Yes, my dear friend, though I have suffered the hardness of oppression, I feel satisfied that at least I am not mistaken for a dependant or a minion. Most firmly attached to the constitution of my country, my voice and my pen, however feeble, shall never be wanting to assert the privileges secured by it. It is, indeed, unpleasant to commence warfare with prejudice, but where it is inevitable no one can refuse to meet it with patience and steadiness. I should delight in tranquillity and love, but never, I trust, shall sacrifice to ease the dearest birthright of man.

Your sincere friend,

JOSEPH STORY.

In 1804, he was invited to deliver the annual oration on the 4th of July, commemorative of the Independence of the United States. It was considered successful at the time; its high-flown declamation suiting the popular taste. Speaking of it in a letter to Mr. Williams, dated October 5th, 1804, he says, —

"I have long waited for an opportunity to send you a copy of my oration, and also an ode written for a charitable institution. With this you will receive them, and in the perusal



I would have you think as applicable to them the expression of Johnson, 'that they were written not in the ease of literary retirement but amid distraction and sickness,' and in hurry which admitted no delay and no choice. I gave the oration with much reluctance to the public, because I never had leisure to give it even a second transcription. As it is, receive it, my dear fellow, with a hearty welcome."

During the same year he devoted much of his leisure hours to poetry. He re-wrote his poem, on the "Power of Solitude," making great alterations and additions, and published it with several smaller pieces, among which were two poems by Miss Oliver.

"This work," he says in his Autobiography, "had very little success. The critics spoke unfavorably of it. And what was a little remarkable, finding from my preface that some of the minor poems were not written by me, they praised highly those, which they supposed were not mine (and which in fact were mine) and censured all the others. Such is critical praise, and such critical sagacity. Henceforward, I dropped poetry, except as an occasional amusement of a leisure hour; and I departed from its fairy realms with a humble belief that I was not destined to live even at the outskirts of its enchanted scenery. I took a lawyer's farewell of the muse, and following out the precepts of Blackstone, plunged at once into the dark labyrinth of the ancient learning of the law. Yet I cannot say, even at this distance of time, that

"The dreams of Pindus and the Aonian maid,  
Invite no more."

The "Power of Solitude" is a didactic poem in two parts, written in the English pentameter or heroic verse, and fashioned somewhat on the model of Roger's "Pleasures of Memory." It was written at a time when Eng-

lish poetry was nearly at its lowest ebb, and it had the faults of its age. The Della Cruscan School then reigned supreme in America, and even in England the influence of the lake poets was very limited. Every versifier used a poetic language. Poetry was prose gone mad. Milton's parenthetical definition of what it should be, "simple, sensuous, passionate," had long been set aside, and by universal acclaim, the Muse, as she was called, was required to be bombastic, artificial and unnatural. Simple English was too common for her use. She must be pampered by Latinized forms. She drove a Pegasean two-in-hand of metaphor and personification, which usually managed to run away with her and bear her beyond the regions of sense. Phaëton was a trifle compared to her. Her bathos exceeded his fall. In America, there was no native poet whose reputation was superior to that of Robert Treat Paine; and I have often heard my father speak of the tremendous applause with which these lines addressed to Washington, in his poem on "The Invention of Letters," were received, as he delivered them at the Commencement of Harvard University, in the year 1795.

" Could Faustus live by gloomy grave resigned,  
With power extensive as sublime his mind,  
Thy glorious life a volume should compose,  
As Alps immortal, spotless as its snows.  
The stars should be its types, — its press the age, —  
The earth its binding, — and the sky its page.  
In language set, not Babel could o'erturn, —  
On leaves impressed, which Omar could not burn, —  
The sacred work in Heaven's high dome should stand,  
Shine with its suns and with its arch expand;  
Till nature's self the Vandal torch should raise,  
And the vast alcove of creation blaze."

The natural good sense of my father saved him from much of the extravagance of the time, but he was not untainted by the general plague. Often has he avowed, in after life, that it cost him years of labor to divest himself of the false taste in composition he acquired in youth. The defects of his poem on the "Power of Solitude" are exaggeration of feeling, confusion of imagery, and a want of simplicity of expression. The style is stilted and artificial. But though dull as a poem, it shows facility and talent for versification, breathes a warm aspiration for virtue and truth, and is creditable to his scholarship.

The following extracts will serve as specimens of the poem, and may not be without interest here, as the copies of the work are exceedingly rare, my father having bought up all he could find, and burned them.

"Why will ye tell of all the world can give?  
Say, can it teach the science, how to live?  
How best in generous deeds the soul employ,  
And form its views to virtue's blameless joy?  
Here all the glory lies, to fortune known,  
And here the cottage emulates the throne.  
What tho' the courtly pomp of eastern pride  
Deck the rich couch, and o'er the feast preside,  
What tho' from suppliant crowds the sceptre claim  
Unrivalled honors and unquestioned fame;  
Can these, where avarice haunts the pining mind,  
Calm the fierce rage, which preys on human kind?  
Can these, where conscience fills with deep dismay,  
Reverse the gloom, and change the night to day?  
Can these, where anguish holds her fiery reign,  
Raze out the written troubles of the brain?  
O'er the proud scene the sword of haggard care  
Hangs to destroy, suspended by a hair!

Perhaps ye deem, where grandeur holds the throne,  
No odious cares invade, no faltering groan;



But loves and graces lead their circling dance,  
Gay as the forms rehearsed in wild romance.  
Delusive thoughts ! that haunt the domes of state,  
False as the dreams dismissed the *ivory* gate ;  
Far different tests severe experience brings,  
To point its moral on the fate of kings.

Ask lovely Maintenon, when fortune smiled  
To deck with regal charms its favorite child,  
Why, mid St. Cyr's lone walls she loved to dwell,  
And pace with musing step the vestal's cell ;  
Her conscious lips the motive could declare,  
Beneath the purple lurks the fiend of care.

So to the shades of calm Ripaille's retreat,  
Savoy's proud monarch turned his pilgrim feet,  
When age had damped ambition's vivid flame,  
And taught that royal pomp usurps — a name.

And lo, where Zehrah's lofty turrets rise  
With marble grandeur to the genial skies,  
What curious beauties seize the wondering sense,  
Profuse in wealth, in luxury intense !  
Blaze the vast domes, inwrought with fretted gold ;  
The sumptuous pavements veins of pearl unfold ;  
Arch piled on arch with columned pride ascend ;  
Grove linked to grove their mingling shadows blend ;  
From thousand springs pavilioned fountains play,  
Refreshing coolness thro' the sultry day ;  
Fruits, flowers, and fragrance all at once conspire  
To thrill the soul, and renovate desire ;  
Yet hear the Caliph of the bright domain,  
When fifty suns had graced his golden reign,  
When war's last triumph left no theme for praise,  
And peace and victory led their golden days ;  
Yet hear the sage, whose sobered thought confined  
To half a moon his real bliss of mind ;  
' Vain are the gifts deluded mortals prize ;  
Place not thy trust, O man, beneath the skies !'  
In life's thronged paths how few with safety tread.  
Nor mourn their virtues stained, their hopes misled :  
How few approve, in judgment's tranquil hour,  
The vain pursuit of wealth, the strife for power ;  
Heedless that time the summer dreams will shroud,  
We seek a goddess, and embrace a cloud !

Then, if thy soul this grovelling scene transcends,  
And pants for truths, immortal science lends,  
If, winged by fancy to the ebb of days,  
Thy rapt ambition asks her noblest praise ;  
Give to her sacred shrine perennial rites,  
Youth's vigorous days, and manhood's studious nights ;  
Turn every page with anxious vigils o'er,  
Profuse of thought, and prodigal of lore ;  
Nor let the world with strong temptation rife,  
Steal thy bright hours from solitary life,  
Nor pause, till learning all her gates unfold,  
Her altars plundered, and her mysteries told,  
Till deep inbreathings all thy soul inspire  
With classic virtue and poetic fire.  
And, as the ancient seer from Pisgah's height  
Thou see'st the promised land in cloudless light.

And is there here no blest Elysian grove,  
Whose golden branches shield the fruits of love ?  
Are all the scenes, which vigorous genius frames,  
But vain illusions, and ideal names ?  
Pants but the soul for higher joys to throw  
On human ills a visionary woe ?  
Let narrow prudence boast its grovelling art,  
To chill the generous sympathies of heart,  
Teach to subdue each thought sublimely wild,  
And crush, like Herod, fancy's new-born child ;  
The cultured mind, which active sense inspires,  
For nobler flights shall trim its slumbering fires,  
From airy dreams, tho' weaved in fiction's loom,  
Point virtue's triumph o'er the closing tomb,  
For happier climes its destined glory plan,  
And lend immortal life to mortal man.

Grandeur may dazzle with its transient glare  
The herd of folly, and the tribe of care,  
Who sport and flutter thro' their listless days,  
Like motes, that bask in summer's noontide blaze,  
With anxious steps round vacant splendor while,  
Live on a look, and banquet on a smile ;  
But the firm race, whose high endowments claim  
The laurel wreath, that decks the brow of fame ;  
Who born, when passion kindled wild desire,  
Conceive with frenzy, and express with fire,

Or, warmed by sympathy's electric glow,  
In rapture tremble, and dissolve in woe,  
Blest in *retirement* scorn the frowns of fate,  
And feel a transport, power can ne'er create."

During this year he also prepared for the press and published a "Selection of Pleadings in Civil Actions," with copious notes. This work was received very favorably by the profession, and for a long time was the sole book of forms used in this country. Professor Greenleaf, in his beautiful discourse delivered before the Law School on the death of my father, says, that "its appearance, with its valuable body of notes, gave a new impulse to study in this department of professional learning, and after the lapse of forty years is still resorted to with all the confidence originally reposed in it."

On Sunday, December 9th, 1804, my father was married to Mary Lynde Oliver. A deep sympathy of views and feelings united him to his wife, whose intellect commanded his respect, as her gentleness and amiability had won his heart. The first few months of married life glided on serenely. He "had a home wherein his weary feet found sure repose," and in the social joys of his own fireside he experienced the purest satisfaction. He was rapidly advancing to honor and fortune in his profession, and a future of happy years seemed to open before him. But these days of happiness were short. His wife's health began to decline, and in a few months after his marriage, disease had made itself his guest, and the fear of his wife's death darkened over him.

On the 21st of June, 1805, he thus writes to his friend Mr. Fay:—

"Unfortunately, I fear that my intended visits to you with



my wife this season, will not be perfected. On my return, I found her very unwell, and she has continued to grow more indisposed daily. At this moment she labors under excruciating pains, with all the patience of a saint. My anxiety on this subject has wholly deprived me of capacity for business. There is full room for the gloomiest forebodings, and I have many reasons to fear that her recovery is very doubtful. Attached to her by every tie of sentiment and affection, I need not say how deeply I feel at this moment. I endeavor to treat my apprehensions as the unreal mockery of fancy, and am willing to disbelieve my senses in favor of hope."

These gloomy forebodings were but too soon realized. A short half year had scarcely elapsed from the time of his marriage, when his wife died on the 22d of June, 1805. This bereavement quite overpowered him, and he indulged for a time in the bitterest grief. His hopes of domestic happiness were blasted, and his home was haunted by saddest remembrances.

In less than two months after the death of his wife, his father died, after a very short illness. Of this melancholy period, and its effects upon his mind, he thus writes in his Autobiography:—

"I will not speak to you of this marriage, from which I anticipated so much happiness. Miss Oliver, at the time we were married, was about twenty-two years of age. She was an elegant and accomplished woman, full of fine sense and interesting in her person and manners. Most persons would have called her beautiful. Our happiness lasted but a short time. She was taken suddenly ill, and after a very short sickness, died on the 22d of June, 1805. This blow I felt with great severity at the time, and it quite unmanned me. It was soon followed by another, which completed the prostration of my dearest hopes. My father died within two

months, in August, 1805. I never look back upon this period of my life without feeling a sense of desolation. It left a dark and melancholy train of thoughts behind. I was new to grief, full of hope and ambition, with an ardent enthusiasm and an almost romantic fervor of imagination. All my hopes were at once cut down and crushed. I remained for a long time like one in a painful dream, and ever since there has been at times on my mind a dread of gloom, which sorrow probably always gathers, and which even the very sunshine of my life does not wholly dissipate."

A letter written to Mr. Fay on the 8th of October, 1805, describes his state of mind.

TO SAMUEL P. P. FAY, ESQ., CAMBRIDGE.

Salem, October 8th, 1805:

MY DEAR FRIEND:

I ought long since to have written to you, and expressed to you my situation and my sorrows. But, indeed, calamity hurrying on calamity has deprived me almost of the power to think or to act. The deep losses which have fallen to my lot have been darkened by a fear, that though two were gone, the grave would be insatiable, until another had joined them. My sister Eliza has been in a most hazardous situation; but if my memory did not remind me, that twice I had been the messenger of miserable news to you, I should dare to say that she is better.

I have just crawled into my office, and am now endeavoring to drown all recollection in the hurry of business. My spirits have been so depressed, and my anguish so keen, that for three months I have been solitary and closeted, unknowing and unknown in the world. All my efforts are directed to obtain tranquillity. Of happiness I have not the most distant hope. Oh, no, my dear friend, whatever my future lot may be, I never can efface the recollections of bitter, unavailing regret. I submit with the fortitude and patience



of desperation to what I cannot control. So far I am quiet; but joy has forever departed and left me the miserable victim of despondency. It is in vain that I have called philosophy or reason to my aid. In losing my wife I have lost the companion of my studies, the participator of my ambition, the consoler of my sorrows, and the defender of my frailties. So exquisitely was she adapted to suit the character of my mind, that I doated on her with distracted fondness, and on her bosom found the never-failing solace of my cares. We were united by the tenderest ties. No sordid interest, no accidental attachment, no transient emotion united us. Our affections were the gradual growth of mingled esteem, respect, gratitude, and friendship. Her modesty so tremblingly alive, so truly admirable, concealed from vulgar gaze the graces of her mind; but in the retirement of our domestic life they shone with loveliest lustre. I cannot hold the pencil to portray her, but friendship will not ask an apology for my eulogy over her departed virtues. My tears and my groans are ineffectual. She has left me forever, and the grave has closed between us.

You knew my father. He was indeed a most amiable man, the tenderest of parents, and the best of fathers. My attachment to him from my earliest years had been very great. He confided to me all his wishes. Benevolent and humane, his feelings never allowed him to accumulate wealth by oppressing the poor, and his integrity shrunk from immoral acquisitions. Of course, he has left a large family with a very moderate support, and I am the eldest of eleven children. The consideration that they look to me for support and consolation under an irretrievable misfortune, compels me to value my life, which would otherwise be tedious and uncomfortable. To myself, life is indeed a burden I would gladly throw down, and rest with those who feel not the wintry storm. To those who bask in sunshine, such feelings may appear strange; to those who have lost all that is dear, death is not an unfear'd, but a welcome visitant.



But I forbear to trouble you with my complaints, which cannot recall the past nor restore the faded. It is some consolation to pour out my soul to the few friends of my youth, and I know that you will give me your generous sympathy. When we next meet I trust you will find me composed and cheerful, willing to be amused, and ready to participate. But in my secret heart is treasured a load of sorrow which shall not obtrude on the hours which hitherto have been sacred to friendship.

May Heaven bless you and your wife, and give you the domestic felicity which has vanished from the heart of

Your affectionate friend,

JOSEPH STORY.

My father sought relief from painful thoughts by severe and exclusive labor in his profession. His business was now large and daily increasing. His position at the bar was prominent, and he was engaged in nearly all the cases of importance. His manner to the jury was earnest and spirited; he managed his causes with tact, was ready in attack or defence, and had great eloquence of expression. As an advocate, he showed the same sagacity of perception, which no intricacy of detail could blind and no suddenness of attack confuse, which afterwards so distinguished him as a Judge. In the preparation of cases he was cautious and scrupulous, patiently mastering the law and the facts before the trial, and never relying on first views and general knowledge. One anecdote will illustrate the mode in which he prepared himself.

In the case of *Rust v. Low*, which was argued in Essex, (6 Massachusetts Reports, 90,) he was retained by the defendants as junior counsel with Mr. Dane,—Mr. Prescott and Mr. Andrews being of counsel for the plaintiff.

The action was replevin for cattle, which having strayed from the plaintiff's close into an adjoining one, thence passed into the close of the defendant, by whom they were taken and detained as damage feasant. The main question was whether, in the absence of any covenant or prescription, the tenant of a close is bound to fence against the cattle of strangers, or only against such cattle as are rightfully on the adjoining land. When this case was about to come on, Mr. Prescott said to my father, "we shall beat you, Lord Hale is against you," alluding to a note by that great lawyer to Fitzherbert's *Natura Brevium*, (128.) This note had not escaped the observation of my father, and satisfied that the passage in Fitzherbert had been misunderstood by Lord Hale, he had explored all the black-letter law on the subject, and had translated nearly thirty cases from the Year Books, to show what the mistake was, and how it arose. At the argument, the note to Fitzherbert having been cited on the other side as clearly expressing the rule of the common law, my father in opening said, "I think I shall satisfy the court that Lord Hale is mistaken." "What, Brother Story," said Chief Justice Parsons; "you undertake a difficult task." "Nevertheless," was my father's reply, "I hope to satisfy your Honor, that he has really misapprehended the authorities on this point." He then proceeded to explain the mistake, and so strongly fortified his position by the cases from the Year Books as to satisfy even the opposing counsel, that Lord Hale had misconstrued the passage in Fitzherbert. Mr. Prescott argued in reply with great ingenuity, that even if Lord Hale had mistaken the meaning of the particular passage, yet his very error showed what he considered the rule of law to

be, and that his opinion was too weighty to be overturned by the elder authorities. The court thereupon took the question under advisement.

At the next term, the Chief Justice sent for my father and said that he had found, noted upon his minutes of the argument, a statement that Lord Hale had made a mistake, but what the error was, and how it was to be explained, he had forgotten, and he wished to have it re-stated. My father accordingly procured the books, and re-argued the point, the Chief Justice taking full notes. In the judgment of the court, afterwards pronounced in Suffolk, the Chief Justice, without giving the slightest credit to counsel for the argument, or for any suggestion as to Lord Hale's mistake, went through the demonstration of the error, and cited the authorities, as if he had discovered it himself, somewhat to the amusement of those who were in the secret. The reporter followed the lead of the Chief Justice, and in his report of the case the argument of counsel is entirely omitted. My father sometimes related this anecdote laughingly, to show the hard fate which young lawyers often meet with at the hands of the Court. The following manuscript note in his handwriting, I find appended to this case in his copy of the Massachusetts Reports.

"I well remember that this mistake of Lord Hale was first noticed and explained by Story, of counsel for the defendant, in the original argument, and the authorities were cited and commented on by him in illustration. It is not a little remarkable that not one word is suggested either by the reporter or the Court on this fact. From aught that appears, the Court was the sole discoverer of all this nice learning. Is this right?"



It was during his early practice at the bar, that he became interested in the study of the old Feudal Law, and devoted himself to the mastering of those intricate and technical rules which govern the law of Real Property. He pored over the old black-letter folios, commonplacing and digesting as he read, and seemed to take delight in seeking the clue to their dark mazes. The Year Books were his friends; Coke upon Littleton "smoothed his rugged front," and Benloe, Keilwey, Jenkins, and the later Levinz, Siderfin, Moore, and Rolle, with their uncouth jargon, compounded of Latin, French, and English, were his familiar guides to the primeval forests of the Norman and Saxon laws. He loved to trace modern doctrines to their fountain-head in Feudalism, to the castle of the baron, or the monastery of the monk. Amid the morasses of escuage, chivalry, grand serjeantry, copyhold, premier seizin, frank marriage, (their very names like "bells jangled harsh and out of tune,") he labored earnestly — and was familiar with essoins, vouchers, writs of aiel, bisaiel and mort d'ancestre, and the many other mysteries of obsolete law. The difficulty of the task provoked his ambition, and it was not long before he had made himself a thorough black-letter lawyer.

It was at this time that he undertook the Herculean task of making a digest supplementary to Comyns's and on the same plan, containing the doctrines laid down by the courts, and the important writers on jurisprudence in England and America. This project he was finally compelled by his increasing business to abandon; but not before he had proceeded in it to a considerable extent. The subjects of Insurance, Admiralty, and Prize, are among the most finished. The manuscript of this work,

in three thick folio volumes, was presented by my father to the library of the Dane Law School, where it now is.

The following memorandum, written by him on the fly-leaf of the first volume, shows the plan he adopted, and the extent to which it was carried out:—

“It was my original design to have included in this Digest, all the decisions in the American Courts, which seemed entitled to be held as authority, and also such English and other foreign authorities as might seem useful. I soon found that I had too little leisure for so extensive a plan, and my labors have been chiefly directed to the digest of the decisions in the Courts of the United States.

“The following books are digested in this Digest of Law: Dallas's Reports, 4 vols.; Massachusetts Reports 5 vols.; Cranch's Reports; Johnson's Cases, 3 vols.; Bynkershoek on War, (Duponceau's edition); Azuni on Maritime Law, 2 vols.; *Collectanea Maritima*; Hale de Portubus Maris; Robinson's Reports, 6 vols.; Edwards's Reports; Roccus *Notabilia*, (Ingersoll's translation); Eaton on the Admiralty Jurisdiction, (1755); Godolphin on Admiralty Jurisdiction, (1685); Zouch on Admiralty Jurisdiction, (in Malyne's *Lex Mercatoria*); Spelman on Admiralty Jurisdiction; Roughton's Articles on the Admiralty, (Clerke's Praxis, edition 1798); Caines's Cases in Error, 2 vols.; Binney's Reports; American Law Journal.”

Nor was his reputation as a lawyer confined to the town or state wherein he lived. He was retained as counsel in many important cases in the adjoining States, and began to measure his strength with antagonists of the first powers,—the champions of the bar. He bearded “the lion in his den.” Such men as Dane, Prescott, Putnam, Dexter, Jackson, Mason, justly distinguished for ability in the annals of the New England bar, were his



opponents, and he took rank at once beside them as an advocate and a lawyer.

An anecdote respecting one of the earliest causes in which he was engaged out of the state, he thus relates in his Autobiography:—

“I had not been more than three or four years at the bar, when I was engaged as junior counsel in an insurance cause then pending in the Superior Court of New Hampshire. This was an unexpected honor, and I gladly embraced the retainer. I accordingly went to New Hampshire at the term when the cause was to be tried, having prepared myself as well as I could upon a subject with which my professional experience had as yet furnished me with few practical materials. I there had the pleasure of becoming acquainted with Mr. Jeremiah Mason, then the most eminent counsellor at the bar of New Hampshire, and still maintaining with undiminished reputation that proud eminence. He is, as every one acquainted with him knows, a laborious, acute, learned, sagacious, and accurate lawyer, whose mind is capable of the highest reaches of reasoning, and whose comprehensiveness of view rarely leaves any thing untouched or unseen, belonging to the subject which he investigates. He and another distinguished gentleman were our adversaries, and we had the advantage of being for the plaintiff, and of course the right to open and close the cause. My leader I knew little of, but understood that he was ingenious and eloquent, and the cause had many materials for a display of this sort; for one of the vital questions was, whether there had been a fraudulent concealment of the loss before the insurance was effected; and upon the facts, it turned on the nice consideration, whether a letter coming by the mail was received on the day when the insurance was made, or on the succeeding day. Behind this, there were some difficult questions of law in respect to the liability for the loss. It was not until the day



before the trial was to take place, that from causes, which it is unnecessary to mention, my leader declined the task, and left me alone in the cause under circumstances of the greatest embarrassment. A stripling, as I was, I had not the rashness to encounter such fearful odds. But it was too late to engage new counsel, and the only alternative was to consent to a verdict against my client, and take the then common remedy of a review or second trial, or to go on and lose the verdict after a struggle for victory. My client's reputation being at stake, (and he was a gentleman of fair character,) he thought the former course would cast an imputation upon it, and he insisted, against all my remonstrances, upon going on. I yielded, sensible of the rashness of the undertaking, and, ambitious as I was, still too sensible of my own deficiencies to hope for victory in such a struggle. By great good fortune, for I ought not to call it skill, I succeeded. This achievement gave me considerable *eclat*, and I was immediately retained in other causes, and for four or five years afterwards, I continued to practise at the Superior Court of New Hampshire, Rockingham county, with unabated reputation; and then left it, because my home business rendered such absences inconvenient.

“But to conclude my story. The cause in which I was successful was tried again upon what is called a review in the local practice. Not choosing to hazard the little I had gained, I made an express stipulation with my client that other counsel should be engaged for the next trial to act as leader. But when the cause at the next term came on for trial, I was astonished to find, that instead of elder counsel, my juniors only were retained. There seemed to be a recklessness of consequences, and a confidence in results in this proceeding, which both alarmed and mortified me; and my fears were excited to a greater height, when, on entering the court, I found that Mr. Dexter, of Boston, then at the head of the Massachusetts bar, and truly *princeps inter pares*, was to assist Mr. Mason on the other side. I utterly refused to go on; and

made a motion for a continuance to the next term, alleging the facts in vindication of it. The motion was overruled; but the court thought I was entitled to the poor indulgence of two days delay to send to Massachusetts for other counsel. A messenger was accordingly despatched for Mr. Prescott, and on returning brought the information, that he was then engaged in a cause at Boston, and that it was impossible to procure his aid. This was on the evening before the day assigned for trial. I was now in utter despondency, and peremptorily declined doing any thing in the cause. My client was an aged man and wept bitterly, and entreated me not to desert him, assuring me that if with such odds against me I lost the cause, he should be satisfied with my efforts. His tears and entreaties at last brought me over. I moved a second postponement and failed. The cause came on, and I told the real tale of my misfortunes to the jury. I was contending against talents, learning, character, experience, against my will, and conscious of my inability. I asked their indulgence, and I demanded the patient protection of the court. The cause went on, and as might be expected, my learned opponents brought a weight of eloquence and argument, which seemed destined to crush me. Fortunately, I had the reply; and being as well prepared on the law as I could be, I spoke to the matter firmly and closely, with all the vigor I could command, and all the sincerity which I felt. I was again victorious. The jury, rather against the charge of the court, found a verdict in my favor. I have ever thought that the jury felt some sympathy for me in this embarrassed situation and listened to my appeals, as one strong in faith, however wanting in professional skill. My argument, I believe, was thought well of by the bar. At all events, it was a feather in my cap. I learned, indeed, on this occasion, that the race is not always to the swift, nor the battle to the strong, &c., nor yet favor to men of skill; but that time and chance happen unto them all.

“I have dwelt longer on this circumstance than I intended;

but as it had some influence on my professional career, I thought it might not be uninteresting to you. From that period I was honored with the friendship of Mr. Mason, and that friendship has continued with unabated confidence and cordiality down to the present hour."



## CHAPTER VI.

### POLITICAL LIFE.

HE IS CHOSEN A MEMBER OF THE LEGISLATURE OF MASSACHUSETTS—HIS POSITION AS LEADER—ARTICLES IN THE SALEM REGISTER—HIS POLITICAL GROUND—DEBATE ON THE BILL ESTABLISHING THE SALARIES OF THE STATE JUDGES—HIS SPEECH—MEMORIAL ON THE NEUTRAL TRADE—DEBATE UPON THE EMBARGO—HIS SPEECH—REPORT ON THE ESTABLISHMENT OF A COURT OF CHANCERY—JUDICIARY BILLS—IS CHOSEN MEMBER OF CONGRESS—CHANGE OF FEELINGS—LOVE OF SOCIETY—LETTERS CONTAINING SKETCHES OF DISTINGUISHED MEN, AND DESCRIPTIONS OF PLACES AND SCENERY—HIS MARRIAGE—HIS VIEWS OF THE EMBARGO—SPEECH AGAINST IT—SPEECH ON THE INCREASE OF THE NAVY—LETTERS WRITTEN AT WASHINGTON ON POLITICS—DECLINES A REELECTION—IS AGAIN CHOSEN MEMBER OF THE MASSACHUSETTS LEGISLATURE—BECOMES SPEAKER OF THE HOUSE—SPEECH ON TAKING THE CHAIR—GOES TO WASHINGTON—LETTERS—ARGUES THE CASE OF THE GEORGIA CLAIM—HIS ABILITY AS SPEAKER—APPOINTED ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES—SPEECH ON LEAVING THE CHAIR OF SPEAKER—EDITS CHITTY ON BILLS OF EXCHANGE AND PROMISSORY NOTES, ABBOTT ON SHIPPING, AND LAWES ON ASSUMPSIT—DEATH OF HIS DAUGHTER.

IN the year 1805 my father was chosen a member of the Legislature of Massachusetts, to represent the town of Salem. Here he immediately took the position of a leader, and maintained it with distinguished success during his whole legislative career. In the fierce debates which then agitated the house, his great readiness and talent as an *extempore* speaker told. He was, to use his phrase, "a minute man," often obliged to contend without

preparation, and sometimes single-handed, against the powerful talent which preponderated on the federal side of the house. Scarcely a committee of any prominence was appointed while he was a member upon which he was not placed, and very frequently as chairman. In the letter to Mr. Everett, he says, —

“Owing to the fact, that there were few professional men in the Commonwealth at that time belonging to the republican party, and of those few scarcely any in the legislature, I was soon compelled, notwithstanding my youth, to become a sort of leader in debate, and I may say, that I occupied that station *de facto* during all my legislative life.”

At this period he frequently wrote for the Salem Register; but as his paragraphs were placed under the editorial head, with no distinguishing mark, it is not easy in all cases to identify them. There is little doubt, however, that the following article was from his pen.

“The great pains taken to increase all prejudices against the French, when they had little power over the abuses which their subjects commit, while every indulgence was given to the English, too plainly discovered prejudices, which ought most seriously to be reprehended. Far should every American be from disposition to excite needless prejudices against any nation. Far should he be from justifying an injury from one that had not the same favor from another. To preserve our independence, we must deal justly, and be circumspect with all. If no political evils could arise, we might be indifferent on this subject. But to the French we have no attachments which interest cannot create. For the British, we have all the partiality which can belong to customs and laws. We should cultivate favor with all, but upon the

great principles which all will justify. But are we strangers to the artifices by which an undue foreign influence can be obtained? Have we never suffered from them? Is there a generous Englishman who cannot distinguish between justice to his nation, and a submission to his unreasonable claims? Is there one who does not wish to feel the distinction? Let it not then be supposed, that a love of our own nation, above any other, is a hatred of any nation. We wish the firmest affection between the two nations established upon honor and justice. But when they violate the laws of nations, when they commit depredations upon the unprotected commerce of individuals, and without notice seize upon the innocent as their prey, — we must be forgiven if we say, we abhor commerce with such a nation, and withdraw from every alliance with oppression." *Sept. 19, 1805.*

The motto which the Salem Register adopted in the year 1802 and still retains, was also written by my father.

"Here shall the Press the People's right maintain,  
Unawed by influence and unbribed by gain;  
Here Patriot Truth her glorious precepts draw,  
Pledged to Religion, Liberty, and Law."

In his politics he was an ardent republican, and believed in the policy of Mr. Jefferson. But he was never a partisan,

"Who to party gave up what was meant for mankind."

He acknowledged no political code of morals in violation of private duty and conscience. He never submitted the convictions of his judgment to party dictation. When he could not assent to the policy or justice of measures originated by the republicans, he spoke and voted against them; and always supported such measures of the opposition as he believed to be proper



and beneficial. This, of course, often offended his political friends, and created temporary unpopularity; but it was not merely popularity that he sought. He knew not

"How to engage his modest tongue  
In suits of private gain, though public wrong,  
Nor hunted honor, which yet hunted him."

He says in his Autobiography, —

"Of my legislative career I will say a few words. Though I was a decided member of what was called the republican party, and of course a supporter of the administration of Mr. Jefferson and Mr. Madison, you are not to imagine that I was a mere slave to the opinions of either, or that I did not exercise an independent judgment upon public affairs. The republican party then and at all other times embraced men of very different views on many subjects. Nay, a Virginia republican of that day, was very different from a Massachusetts republican, and the anti-federal doctrines of the former state then had and still have very little support or influence in the latter state, notwithstanding a concurrence in political action upon general subjects. I was at all times a firm believer in the doctrines of General Washington and an admirer of his conduct, measures and principles during his whole administration, though they were to me mere matters of history. I read and examined his principles, and have made them in a great measure the rule and guide of my life. I was and always have been a lover, devoted lover, of the constitution of the United States, and a friend to the union of the states. I never wished to bring the government to a mere confederacy of states; but to preserve the power of the general government given by all the states, in full exercise and sovereignty for the protection and preservation of all the states. I never made any concealment of these opinions, and on more than one public occasion I

avowed them with a firm and unfaltering explicitness, when silence might perhaps have been deemed more prudent in point of policy. I remember that on one occasion in particular, in the debate on the celebrated resolutions of Mr. Gore, (afterwards Governor,) in 1808, it falling to my lot as a leader in opposition to them to close the debate, I avowed and vindicated my admiration of General Washington's administration in an elaborate review of it.

"While a member of the legislature, though I was quite young, I was compelled, from causes to which I have already alluded, to take an important part, and generally a leading part, in every debate which brought the parties into conflict. There were few republican lawyers in the state, and but few of them in the legislature; and in the republican ranks, the number of good speakers, or even of tolerable speakers, was small. I thus was pushed forward to a prominence in debate, and in measures, which usually does not fall to the share of a young man in the New England States. I look back to that period of my life with some honest pride in recollecting that I was not betrayed into any departure from a just moderation of conduct, though my party from being a minority, in the progress of events, obtained a triumphant possession of all the legislative and executive departments. The odious measures of proscription and removals I steadily opposed, and the unjustifiable districting the state into senatorial districts in 1812, which was one of the causes that precipitated the fall of the republicans from power, I neither aided nor approved; and indeed I ceased to belong to the legislature before it passed."

In the biographical letter to Mr. Everett, he says, —

"I will add, because it is but common justice to myself, that though an *ardent republican*, I was always liberal, and stood by sound principles. I was avowedly a believer in the doctrines of Washington, and little infected with Virginia notions, as to men or measures.

"In my legislative career, I uniformly stood by the law, and gave it all my support. There were two trying occasions, on which I acted a bold part, the rewards of which I now reap in the consciousness of a sacrifice of temporary popularity to the permanent good of the Judiciary. I allude to the establishment of the salaries of the Judges of the Supreme Court in Massachusetts upon a permanent foundation. As they were all at that time federalists, the measure was naturally disagreeable to most of my political friends, and exceedingly unpopular with the party at large. Let me say a few words on this subject. Before the year 1806 the salaries were about \$1200 per annum. But, contrary to the clear import of our state constitution, requiring that "permanent and honorable salaries" should be assigned to them, an *annual* grant of \$500 or \$600 more was usually made upon their *petition*. Chief Justice Parsons was appointed Chief Justice at about this period, and he had expressly declared that he would not accept the office unless the salary was made constitutionally permanent. This was known to his friends only, and was communicated to me. Accordingly I moved a committee, was appointed chairman, and reported a bill giving the Chief Justice \$2500 and the other Judges \$2400 per annum."

The motion, which was made on May 28th, 1806, was negatived at first by a vote of 219 to 198. A reconsideration was moved, which was very warmly advocated by my father, and prevailed by a vote of 272 to 158,—showing what impression was made on the opposition by the debate. The subject was then referred to a committee,<sup>1</sup> of which my father was chairman. The report drawn up by him was as follows:—

<sup>1</sup> This committee was composed of Messrs. Story, Slocum, Wheaton (of Norton,) Kinsley, Parsons (of Chesterfield,) Perry (of Rehoboth,) and Mason (of Boston.)



## REPORT.

The Committee, to whom was referred the order of the House of Representatives, "to consider, whether any addition is necessary to be made to the salaries of the judges of the Supreme Judicial Court of this Commonwealth," report: That the constitution of this Commonwealth has provided, "that permanent and honorable salaries shall be established by law, for the Justices of the Supreme Judicial Court; and that if it shall be found, that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time, be enlarged, as the General Court shall judge proper."

By an act of February, 1781, soon after the constitution was adopted, the salary of the Chief Justice was fixed at \$1066.66, and of the other Justices of said court at \$1000 each, per annum. These continued to be their salaries, until, by an act of February, 1790, that of Chief Justice was fixed at \$1233.33, and of the other Justices at \$1166.66. These last have ever since continued to be, and still are, the only permanent compensations of the said Justices, they being debarred by law from receiving any fees or perquisites. By occasional resolves, from 1794 to 1804, temporary grants have been made to the said Justices, of sums, varying from \$166.66 to \$600; but these grants have been limited to one year. By a resolve of March, 1804, a grant was made to the said Justices of \$800 annually for three years, commencing in January, 1804, which, of course, expires with the present year.

The Committee further report, that, although it would be unbecoming in them to decide, that the acts of the Legislature are in any manner a violation of the Constitution; yet, they respectfully submit, whether the temporary grants aforesaid can be considered such a permanent compensation, as is within the purview of the article of the Constitution above recited, and consistent with the clause in the Declaration of Rights, that the Justices of the Supreme Judicial Court

"should have honorable salaries ascertained and established by standing laws."

Whatever may be the correct opinion on this subject, the Committee entertain great doubts of the policy of any measure, which has the immediate tendency to place the judicial department at the footstool of the Legislature. They beg leave to quote for this purpose the words of the Constitution, applied to the salary of the Governor, and which seem, from their connection with the clause relative to the salaries of the Judges, as well as from their forcible expression, to be peculiarly directed to this principle: "As the public good requires, that the Governor should not be under the undue influence of any of the members of the General Court, by a dependence on them for a support; that he should, in all cases, act with freedom for the benefit of the public; that he should not have his attention necessarily directed from that object to his private concerns; and that he should maintain the dignity of the Commonwealth in the character of its Chief Magistrate; it is necessary he should have an honorable stated salary, of a fixed value, amply sufficient for those purposes, and established by standing laws."

These reasons, so applicable to a chief magistrate, certainly lose none of their force when considered in reference to courts of law. Before these tribunals, the property, the reputation, the rights and liberties, and, above all, the life, of every individual citizen of this Commonwealth, are subjects of decision. On the inflexible integrity, the profound knowledge, and strict impartiality, of the Justices of the Supreme Judicial Court, who are arbiters in the last resort, assisted by intelligent jurors, rests every thing which is dear to us in life, and which can affect us with posterity; every thing, which is honorable in character, or valuable in enjoyment; in one word, every thing which renders society a blessing and secures its continuance.

The Committee would therefore inquire, whether it be not of the last importance, that judges should be elevated above



the hope of reward, the influence of affection, or the fear of censure? Whether they should not be wholly exempt from any consideration of immediate support, and placed as a refuge and protection in times of political heat, beyond the necessity of bending to the changes of those times, in order to gather favor, or avert calamity? Whether they should not be placed beyond even the temptation of accommodating the law to present purposes; and, by gratifying ambition or interest, to break down the rules that guard the security of property and the safety of rights? Whether, indeed, their compensation ought not to be such, as to command the first talents in the community, and insure to those, who are learned and honest, as well as those, who are great and rich, the participation of those juridical honors, to which the lucubrations of twenty laborious years are scarcely adequate? The Committee beg leave to submit, as their opinion, that these inquiries must lead to a conclusion, that independence in compensation, as well as in tenure of office, is essential to the permanent respectability of the judicial department.

The Committee further report, that, since the year 1790, the business of the Justices of the Supreme Judicial Court has increased at least fourfold. They are obliged to travel into many counties twice a year, where formerly they travelled but once; and in some counties terms of the said Court are now held, where formerly there was none. The great extension of population and agriculture, the variety and intricacy of a new and continually increasing commerce, and the almost endless other subjects of litigation, consequent on a flourishing domestic intercourse, have swelled, and are annually swelling, the already crowded dockets of every judicial court. For six months every year the Judges of the Supreme Judicial Court are travelling the circuits of the Commonwealth, and their expenses on this account are great. The other six months are absorbed in pursuits, not less fatiguing to themselves, nor less important to the people. In the vacations, they are necessarily engaged in forming and



digesting opinions on special verdicts, reserved cases, cases on demurrer, and other questions of law, referred solely to the Court for decision, which are too intricate for judgment on the circuits, and require deep and minute investigation in the closet. Their whole time, therefore, both for their own reputation and for the despatch of justice, must be devoted to the public. Domestic concerns, and, much more, the active pursuit of property, are, in a great degree, inconsistent with their duties; and, as they are thus shut out from the acquisition of wealth, it would seem to be the proper office of the legislature to become the guardians of their families, and the supporters of their independence. Considering, therefore, the salaries established in 1790, either in regard to the increased duties of the judges, the greater number of circuits, and the vast addition of business in the courts, or the great depreciation of money, and consequent higher price of the necessaries of life, the Committee cannot but think, that double those salaries at the present time would hardly be a compensation equivalent to those permanently established in 1790; which, from grants almost immediately succeeding, seem to have been then deemed insufficient by the legislature.

With these views, the Committee respectfully report, that in their opinion it is necessary to make an addition to the salaries of the Judges of the Supreme Judicial Court of this Commonwealth; and they report a bill accordingly.

By order of the Committee.

JOSEPH STORY, *Chairman*.

The letter written to Mr. Everett, November 1st, 1832, continues:—

“The question on the acceptance of this report, brought on a most animated and vehement debate. I managed it as leader, and exerted all my powers. After a most arduous

conflict we triumphed, by a small majority. Situated as we were politically, the bill must have been lost but for my efforts; for the vote was not a mere party vote, but was carried by my personal and political friends, most of the federalists from the country voting against it. By this act I lost a good deal of political favor for the moment; for it was but too well known, that, without my zealous aid, it must have failed. Chief Justice Parsons made a great sacrifice by accepting the office, his professional business being then worth \$10,000 per annum. Three years afterwards, (in 1809,) finding the salary as thus raised inadequate to his support, he sent for me, and told me frankly he must resign unless it was increased. Under the same auspices the subject was again referred to a committee, and from policy I was not made chairman. The bill reported was mine. It gave the Chief Justice \$3,500 per annum, and the other Judges \$3,000. The republican party were at this time triumphant in both houses, and a great many of them were politically hostile to the Judges, and very willing that they should be starved out of office. The federalists from the *country* were opposed to giving open aid, and were not to be relied on as being really and heartily in favor of the measure. The melancholy truth is, that the judiciary is not, and never can be a political favorite, especially where salary is asked for. The debate was long and ardent; and to me, on the part of my political friends, *personal*. I took upon myself, however, the whole brunt of the battle. We were again victorious, and the salaries of the judges have ever since (1832,) stood upon the act then passed. Thus, (as I think,) an able administration of justice has been secured to Massachusetts, for the last twenty-five years, which I am sure would have been lost, but for the increase of the salaries at the critical periods above-mentioned. I was for a long time denounced by some of our republican newspapers, (especially by the Boston Chronicle,) for the part I took in this measure. I continue to rejoice in it."



In an account of the latter debate, *The Columbian Centinel* of June 17th, 1809, then under the editorial charge of Mr. Benjamin Russell, a determined federalist, says,—

“Mr. Story made a very luminous and elaborate speech in favor of the bill. He described with great force of reasoning the advantages to be derived to the people by commanding, by a proper liberality, the first rate talents and integrity to administer justice, and the direful consequence which would result from a niggardly policy. He answered all the objections which had been made to the bill in a very able and impressive manner.”

In January, 1806, my father drew up an able memorial from the inhabitants of Salem to the President and Congress of the United States, relative to the infringement of the neutral trade of this country by the English, which was afterwards printed among his miscellaneous works.

In May, 1808, certain resolutions against the embargo, offered by Mr. Wheaton, of Norton, gave rise to a vehement discussion, in which the policy of Mr. Jefferson was vigorously assailed, and the Honorable Christopher Gore, afterwards the Governor of Massachusetts, one of the most powerful speakers on the Federalist side, took so prominent a part as to identify his name with them. They were probably drawn by him. After a long and excited discussion during the whole of Thursday, the house adjourned until Friday, to enable my father to close the debate, he being then too much indisposed to speak. On Friday morning, he took the floor, and defended this measure of Mr. Jefferson in so powerful



and eloquent a speech, as to extort praise from his political opponents, which in the then excited state of political feeling, was no small victory to gain over prejudice. The *Columbian Centinel* of Saturday, May 28th, 1808, in a report of this debate, says:—

“ Mr. Story then made a speech of upwards of two hours long. Some parts of the resolution he defended, and condemned others. And though he declared, that had he been in Congress, he should have voted against the embargo laws, yet as they had passed, he entered into an elaborate argument to demonstrate, that they were the only measures the administration could have adopted in the existing state of things, unless they had declared war, or submitted to the ignominious restrictions imposed on our commerce by the belligerent powers. His speech was ingenious, and impressively eloquent. He indulged in an animated eulogy of the stand which Great Britain had made to rescue the European world from the tyranny of its mighty conqueror. He lamented from his inmost soul, the successes of Bonaparte at Marengo, at Eylau, and Friedland, from which alone he traced the evils we experienced. He declared himself the advocate of the administration of Washington, and the friend of a progressively increased and efficient navy. And had he depended less upon the calculations and refuted statements of English party writers, his speech would have been as argumentative as it was confessedly brilliant.”

The following letter, written at this time, relates to this debate:—

TO NATHANIEL WILLIAMS, ESQ., BALTIMORE.

Salem, June 6th, 1806.

MY DEAR FRIEND,

You must pardon my late neglect, the involuntary result of a pressure of private and political engagements. We have

had a most violent contest in Massachusetts; and though, from the operation of the embargo, and the indolence of the Republicans, Federalism has prevailed, depend upon it, the triumph will not be permanent. The force of the party is exerted with increased animosity, and defeat has rendered it doubly violent.

During the last week we had a most animated debate in the House of Representatives on Mr. Wheaton's resolutions. I had been very unwell, and, indeed, I have not yet recovered. The Boston phalanx armed themselves with all their artillery of oratory. Having examined the subject with some diligence, I arose at the close of the debate, and with my utmost zeal argued against them. I was two hours and a half on the floor. What I said it little becomes me now to state, though I may say that the Republicans profess to be perfectly satisfied. You may probably hear of the subject from other quarters; but believe me, the Federal papers misrepresent it, and the Republican papers will be unable to give a sketch.

Yours affectionately,

JOSEPH STORY.

Another subject which engaged his attention at this time was, the establishment of a separate Court of Chancery with full Equity powers, in Massachusetts. For this purpose he moved, on the 7th of January, 1808, the appointment of a committee to take this matter into consideration. Of this committee he was made chairman, and wrote an elaborate report in favor of the creation of a Court of Chancery. But it was not accepted. The legislature, and particularly the country members, were afraid of innovation. In their apprehension, Equity was a sort of unchartered law, without definite rules or limits, and dependent in its application solely on the discretion of the presiding Judge. The condition of things then in



Massachusetts in relation to this subject was rather peculiar. It had been early perceived, by those conversant with the subject, that a court of law was disabled by its rigid rules and forms from administering justice in many cases where Equity could afford complete relief. An act was accordingly passed under the old colonial charter, providing for the establishment of Equity jurisdiction, but the king withheld his assent. Limited Equity powers were, however, exercised by the governor and council, and as they were appointed by the king, Equity came to be considered an attribute of royalty, and consequently a means of tyranny. This prejudice was still strong when the report was made by my father, and exists to this day in Massachusetts. The sarcasm of Selden has always had a weight with the legislature of this Commonwealth, which no argument could overcome, and the incomplete Equity powers possessed by the courts have been grudgingly given.

Annexed to this report was an elaborate bill, drawn by him, providing for the establishment of a Court of Equity, and laying out its practice and jurisdiction. The report also contained a recommendation of two additional bills, which were appended; one being supplemental to an act establishing a Supreme Judicial Court in Massachusetts, and the other supplemental to an act enlarging the jurisdiction of the Court of Common Pleas.

"The object of both of these bills," he says in the report, "is to render the administration of justice simple, prompt, and cheap; to settle principles of decision which may stand the test of future scrutiny; to awaken the emulation of learned men; and to bring relief home to the doors of the oppressed and the injured."



In the autumn of 1808, after having served for three sessions in the legislature, he was without opposition elected a member of Congress, to supply the vacancy caused by the death of the Honorable Jacob Crowninshield. As this event brings us to a change in his public career, it may be well to pause for a moment to trace the current of his private life for the preceding three years.

The great depression of spirits occasioned by the death of his wife and father, gradually yielded to strenuous labor, to the active excitements of political life, and to the natural buoyancy of his temperament. There was nothing morbid in his character, and instead of wasting his energies in desponding retrospections, he determined to content himself with what remained in life. He soon interested himself in the world about him, his cheerfulness by degrees returned, and he began to draw brighter auguries for the future.

At this time, as in after life, he was remarkable for fulness and fluency of conversation. It poured out from his mind like the stream from the mountains, free, sparkling, and exhaustless. Language was as a wide open sluice, through which every feeling and thought rushed forth; and this gift, connected with sympathies alive at every point, made him a delightful companion. It would be impossible to give an idea of his conversational powers; but the following hurried letters will afford a notion of his vivacity of mind, and warmth of feeling, and are also interesting for the sketches of home travels and distinguished men of the day with whom he came in contact.

TO SAMUEL P. P. FAY, ESQ., CAMBRIDGE.

Salem, December 19th, 1806.

MY DEAR FRIEND:

. . . . .

My days are generally occupied with incessant toils in the network of law; and night, which under common circumstances brings repose, to me is the dispenser of deep and continual regret over all I once possessed and have now forever lost. I can but ill support such reflections; and though I fly them with the utmost impatience, they continually obtrude to perpetuate a miserable lowness of spirits. Indeed, my dear friend, I am not made for a solitary life. You have often witnessed how my heart has expanded on meeting a kindred object, and for a while sported in all the gayety of affection. These are but transient emotions. There is a something in my mind beyond all this, that seems to shut me out from a permanent attachment. I brood in secret over my former love, and darkness sweeps across my mind. I would give a great deal to forget, but memory is not under my control. I indulge a hope that one day will restore me to happiness; but, like the dream of the morning, it is a light and timorous impression.

I will not trouble you farther, for I feel that melancholy thoughts are stealing over me.

Yours very truly,

JOSEPH STORY.

TO SAMUEL P. P. FAY, ESQ.

New York, Friday Morning, May 15th, 1807.

MY DEAR FRIEND:

. . . . .

I think you were last with me in a dead calm, and were kindly told that the said calm was about to please me for a day or two, in which time neither heaven nor earth

afforded one beauty to the eye or ear. Luckily, I was a bad prophet. In about two hours a breeze sprung up and increased with the tide until by noon it blew with great violence. . . . We carried sail nobly and rejoiced in the expectation of reaching our haven in a few hours. My companions on the voyage amounted to twenty. Collegians in great abundance, with sophomoric manners and noisy blusterings. I wished for once that good old English discipline had brought the young gentlemen to a quietus.

"The noisy rabble, just let loose from school,  
Roar'd loud, and chattered without rhyme or rule."

Two ladies, not certainly of celestial origin, in a small degree alleviated the effect. Though they had neither beauty nor elegance of manners to soften our hearts, the attractions of the sex presented some relief. My English friend and a young German were the only part of the group which could excite or diffuse pleasure. On the whole, saving a little too much nationality, I am pleased with the freedom and frankness of a well-bred Englishman. He acts and thinks upon a higher scale than other beings. It happened fortunately that I did not suffer the least sea-sickness; whether it resulted from my having stored myself with a plentiful provision of food, or from the jostling of crazy wagons I know not, but I eat, drank, and sang, right merrily. I should have been an excellent guest at the table of an old feudal baron. I could "have doff'd my armor" and have been a courtly knight to any dame in Christendom. We arrived just before night at Hell-Gate, and were beating against the wind with a full tide, a heavy breeze, and high sea running, when suddenly our ship mis-stayed and plumped ashore on Blackwell's Island. Shipwrecked on the coast, our fair weather flock were not a little discomposed, and feared that evil betided us. As for me, I found that we were quietly on a sand bank, and prepared to repose my limbs at the very entrance of Hell without even



an olive branch to soothe old Cerberus. As some evil spirit would have it, we were seized with the mania of getting to New York that night. A fishing smack was passing by, and in an instant, with one accord, we jumped into our boat, rowed to her and, baggage and all, found ourselves crowded into one of the most miserable, filthy, vile skiffs that ever disgraced the water. Add to this, that the whole were blockheads, half drunk, and that they were too ignorant to manage, and too obstinate to learn, and you will readily believe that we were not in the best quarters. The weather soon thickened and became rainy, and for two hours we were pleasantly contemplating that our crazy skiff would land on the coast and give us the additional comfort of sleeping with a wet jacket in the open air. Never were more strange faces. To be sure, there was no danger of any accident which would injure us personally, but what from disappointment and fretfulness we were calculated to add to the music of a cat meeting no small portion of caterwauling harmony.

Thanks to our stars we landed at the City about 8 o'clock, and soon found ourselves in a public coffee-house. The residue of my time has been devoted to Morpheus, who has received from me a most religious reverence.

God bless and preserve you and Harriet—kiss the boys for me.

Yours affectionately,

J. STORY.

TO SAMUEL P. P. FAY, ESQ.

New York, May 18th, 1807.

MY DEAR FRIEND,

This afternoon I shall wing my way towards Philadelphia. The season advances, and I wish to breathe the southern gales, while spring languishes in their lap. The weather here for the last few days has been execrable; continual easterly

winds with fog have kept my spirits at a very low ebb, and the pleasantness of sunshine scarcely yet possesses the atmosphere. On Saturday I indulged myself in lounging round the city, and George was my *fidus Achates*. So, arm in arm we travelled through every quarter, bent upon adventure, and unluckily met none. In Trinity Church yard a monument is erected to General Hamilton, and I passed a half hour in solemnly surveying it. It is of marble, and you ascend by three stone steps; an iron balustrade encloses it. The base is not very large, perhaps ten feet, and supports in the centre an obelisk, and at each corner an urn. The whole does not exceed in height twelve feet, and though neat, and perhaps elegant, seems hardly equal to the character of the man or the opulence of the city. . . . How transitory is human greatness. The crowd pass and repass, and scarcely once give a glance to the monument. The name is not mentioned. The city feels not the value of the dust it encircles. Do what we will, my dear friend, "to this complexion we must come at last." The fame which we so ardently seek, and so dearly purchase, is a fleeting shadow. It deludes us while living. But the tomb closes on greatness, and it is no more. Perhaps a few wanderers, like ourselves, gaze on the spot and sign a sweet and parting adieu; but the hour of business is undisturbed and the gayety of pleasure pauses not to consider.

On Friday and Saturday I attended several hours at the City Hall, where the Supreme Court were sitting. It happened unfortunately to be the conclusion of the term, and the time was consumed in hearing incidental motions upon affidavits in the English form. The Chief Justice Kent, and Judges Thompson and Tompkins were present. They appeared to be young men, compared with the former gravity of our bench. But I am told Kent is at least fifty. His celerity and acuteness struck me immediately. He seems to



be a good lawyer and despatches business with promptitude. A little too much haste and a disposition to interrupt in some measure lessens the pleasure of seeing him. He has a careless manner of sitting, which, though rather ungraceful, was pleasant to me. It seemed to be the ease of a man who felt adequate to the exigencies of his station. On the whole, if he be not a very great man, I am satisfied he is not humble in his acquirements.<sup>1</sup> Of Thompson and Tompkins I cannot say much, because they interfered very little in the business of the court. The former has the reputation of industry and soundness. The latter is too young on the bench to have entitled himself to great consideration. Harrison is doubtless the first at the bar. His air is modest, his manner easy, and his person rather short. His voice has no force, and I have been told that he is not eloquent as an advocate. The illustrious Hamilton is said to have pronounced him a very learned and able counsellor. Just praise from such a man must be truly gratifying. I cannot, however, but be impressed that industry more than genius, steadiness of pursuit rather than original quickness, have formed and modelled that character. I would have you take this opinion *cum grano salis*, for I confess it is the result of a very hasty, passing examination. You have heard much of Emmett, the Irish counsellor. He is near-sighted, and wears a pendant glass, which he occasionally uses. His appearance is not that of an orator, and his voice is rather thick and guttural. I heard him a few moments only on a motion. There was scarcely any thing to be said, and I presume that his mind was wholly unoccupied by it. I should not much admire the man whose soul could be fanned into a flame at the whisper of a zephyr. Emmett has certainly great reputation here as an advocate; and from this opinion being universal I conclude that he awakens with the inspiration of his subject,

<sup>1</sup> This slight sketch of this eminent judge was made before his great fame as a jurist was completely established.



and rises as he proceeds. As a physiognomist, I should not pronounce him great, yet I think his countenance speaks mind; but it is comprehensiveness rather than vigor. Ogden, Hoffman, Radcliffe, and Benson are the next in order; but I can say nothing of them. They scarcely gave me an opportunity of seeing the outlines of their countenances. The Bar of New York is confessed not to be equal to what it has been. Its splendor has been obscured, since Burr, Livingston, and Hamilton have departed, and undoubtedly years will elapse before ambition will dare to assume their seats, even though the genius be equal. The space occupied by a great man, in the public eye, is not easily filled. There is an inveterate force in habit which but slowly admits the claims of rising merit. We are apt to dwell with most pleasure on the glory that shines on the tomb, or the brightness that is descending to the evening of age.

What I have yet seen of the Bar of New York has by no means diminished my respect for our own. I am satisfied, as much as a wise man ought to be with any opinion formed on slight information, that Massachusetts has legal talents and juridical learning equal to any of her sisters on this side of the Delaware. What lies beyond is now but speculation.

. . . . .  
I am yours cordially,

J. STORY.

TO SAMUEL P. P. FAY, ESQ.

Philadelphia, May 21st, 1807.

MY DEAR FELLOW:

I shall remain in this city for several days. I know well that you will smile at this information, and anticipate a cause, but you will be only half right. In the course of a fortnight many of the citizens will retire to their country seats, and I am desirous to avail myself of a view while the crowd are passing. Yesterday, I employed myself in rambling about the city, and received great satisfaction. I saw nearly all

that was worth a traveller's examination. Peele's Museum is in the state house, and consists of a valuable collection of natural curiosities, arranged into genera and species upon the Linnæan system. In general, these are well preserved, and would form a good study for the inquisitive man. I had time only to glance at them, and cannot, therefore, detail any thing worth your attention. Around the gallery are arranged a series of portraits of the most eminent men of our country, who have figured in the Revolution, or since sustained important political stations or literary honors. These were to me a feast. I forgot birds, beasts, fishes, and insects, to gaze on man. I was engaged in etching the outlines of genius, when, perhaps, I ought to have been surveying the impalpable down of an insect, or the variegated plumage of a bird. As for fossils and minerals, I was as insensible of their merit, as if gold had not been dug from the bowels of the earth, and clay had not been the material of the human structure. Notwithstanding these errors and defects, I hope in time to arrive at the power of enumerating the hairs on the tail of a monkey, and of anatomizing the heart of a fire-fly. . . .

At the Academy of Arts, which I next visited, I saw the Apollo Belvidere, the Venus de Medicis, the Kneeling Venus, the group of Laocoon, the Fighting and the Dying Gladiator, Antinous, Diana, and Meleager, and many others which I need not enumerate. Apollo is a divine form, full of majesty and spirit. Venus did not strike me so forcibly. I suspect that my having formerly seen her in some degree diminished the effect. The Dying Gladiator is an admirable work,—a most striking display of the convulsive movements of the muscles, when despair and horror and the love of life combine to give them action. But why need I state to you these things? Look into any book of travels, and you will find an account of the originals, very far beyond what I could give. . . .

I board at the Mansion House, as it is called, which was

built and formerly occupied by Mr. Bingham. It is finished in a very superb style in the interior. The entertainment here is admirable in every respect. I sleep in the front hall chamber, a place once devoted to the brilliant circles of fashion, and adorned with the sparkling beauties of Philadelphia. It is now a public coffee-house! It is strange to me that no gentleman in the city has been willing to inhabit it. It seems as if in this country every elegant mansion were destined to show us the vanity of human greatness. You may remember that the dwelling house of Mr. Russell is now displayed to the public by Monsieur Chapotin. . . .

Affectionately yours,

J. STORY.

In some of the following letters it will be seen, that my father adopted for himself and his friend, the names of two characters in Smollet's Novel of Humphrey Clinker.

TO SAMUEL. P. P. FAY, ESQ.

Washington, May 29th, 1807.

MY DEAR MATTHEW BRAMBLE:

Take down the "Miseries of Human Life," and look at the pages of that groaning work for the articles respecting travelling. If you have there learned to commiserate the wretch who is soused into a horsepond or bespattered with mud, I pray you to reserve that compassion for me. Between Philadelphia and Baltimore, one hundred miles, and between Baltimore and Washington, forty miles, are as execrable roads as can be found in Christendom. You would hardly believe yourself in a Christian country, unless every now and then in the intervals of a tremendous jolt you should indulge your fancy. Take my word for it, I am reduced to a mere jelly. No unfortunate wight pounded in a mortar has a less *bony* claim to consistency. The weather, however, has been de-



lightful, and this with the very pleasant company which I have met at Baltimore, has quite reconciled me to my fate. God help all faint-hearted travellers, for surely they cannot help themselves. . . .

I am now at the seat of government. The capitol is within a stone's throw of me; and the President's house rises in the distance. The capitol is yet unfinished, and the wings only are yet erected. The structure is of freestone, dug from the Potomac, and being strongly impregnated with iron ore, when exposed to the rain its uniformity is tarnished by an ochry appearance. The design appears to be, if not very magnificent, at least very elegant. Between every window pilasters rise in the Corinthian style. The height is three stories, and when the centre is completed the effect will certainly be striking. As I am no architect, it is impossible for me to give any correct detail of the disposition of the internal area. Indeed, as my curiosity rather respects men than things, you would receive a sleepy narrative from a very sleepy pen.

Though Washington is surrounded on all sides by a barren country, yet its local situation is certainly good. It stretches along the northern bank of the very beautiful Potomac, and from an uniform level at the bank, gradually rises into small and gentle elevations. Judging by my eye, and with the beauty which a verdant covering gives it, I confess very few plots of ground are so well adapted for municipal purposes. A million of inhabitants might be enclosed with comfort, within a few miles, and might enjoy a fresh air and lively prospect. It is not, however, as you must have frequently heard, accounted healthy. Whether this be the result of peculiarity of climate, or local causes, is not for me to determine. If you expect to find a considerable town here, you would be greatly disappointed. Brick houses are thinly scattered on the capitol hill; and at the distance of about a mile, a considerable village surrounds the President's house. Every thing is new, and of course incomplete.

Slowly and silently the infant city rises, and seems to demand a century of years before it can become a numerous metropolis. Unfortunately, commerce has not fixed here her abode, and despotism cannot draw its millions to the spot. St. Petersburg might be dragged from the fens of the Baltic by a Czar, but among a free people the tide of population follows the mart of commerce more than the residence of power. You perceive, that with the common fault of travellers, I am already deciding by a first impression, without caring to investigate facts. It is so much easier to loll in one's elbow chair, and decide by speculation, than drudge through matters of fact, that every man consults his comfort by approving or condemning in the mass. How unfortunate would it be to live in suspense, and at every turn to encounter some stubborn truth, that would upset all our opinions.

I will not write a word more on this subject. It is absolutely like Uncle Toby's Siege of Dendermond. The hobby suits me so well, that I cannot resist an eternal inclination to ride. . . . May I reach *Brambleton Hall* in safety, and enjoy all my whims, dear Matthew, and as ever be,

Thine,

JER. MELFORD.

TO SAMUEL P. P. FAY, ESQ.

Washington, May 30th, 1807.

MY DEAR FRIEND:

Having a letter to Dr. M., I have been most kindly shown every thing about the city which could please or instruct. In the department of state I saw a number of original treaties with the great seals of state annexed. They are written in a fine clear hand on parchment, and bound in rich quarto velvet volumes, ornamented in a superb style. But I was interested chiefly by the signatures of Bonaparte, Talleyrand, Frederic,

William, and George the Third; my curiosity respected men more than things.

I have seen the great men of the administration, Jefferson, Madison, and Gallatin. Jefferson is tall and thin, of a sallow complexion, with a fine, intelligent eye. Dr. M. yesterday introduced me, and we spent a half hour with him, in which time he conversed in a very easy, correct, and pleasant style. His language is peculiarly appropriate, and his manner very unaffected. The negligence of his dress a little surprised me. He received us in his slippers, and wore old-fashioned clothes, which were not in the nicest order, or of the most elegant kind; a blue coat, white worked cassimere waistcoat and corduroy breeches, (I beg your pardon, I mean *small clothes*.) constituted his dress. You know Virginians have some pride in appearing in simple habiliments, and are willing to rest their claim to attention upon their force of mind and suavity of manners. The President is a little awkward in his first address, but you are immediately at ease in his presence. His manners are inviting and not uncourtly; and his voice flexible and distinct. He bears the marks of intense thought and perseverance in his countenance. The miniature lately published by Field in Boston is a very excellent likeness. I visited him again this morning in company with Mr. Madison, at whose house I breakfasted, and conversed with him upon politics in a perfectly familiar manner. His smile is very engaging and impresses you with cheerful frankness. His familiarity, however, is tempered with great calmness of manner and with becoming propriety. Open to all, he seems willing to stand the test of inquiry, and to be weighed in the balance only by his merit and attainments. You may measure if you please, and cannot easily misjudge. On the whole, I confess he appears to me a clear and intelligent man, ready and discriminating, but more formed by philosophical reflection, than by rapid, enterprising, overbearing genius. If he chooses, he cannot fail to please. If he cannot awe, he will not sink into neglect. The current of his thoughts is



gentle and uniform, unbroken by the torrent of eloquence, and unruffled by the fervor of vivid internal flame. Take this passing sketch and color it to your own fancy.

Madison is a most agreeable, modest, and unaffected man, of a short stature, and of a mild countenance. He converses with ease, and seems very well versed in diplomacy. The character of his mind seems to be formed by that of Jefferson, and the pupil is not an unfinished likeness of the master. He has the reputation of a well-read scholar, and without doubt would always sustain a considerable rank in the councils of a free government.

In the Treasury Department I spent a full hour with Gallatin, and having occasion to consult him on business, I had a better opportunity to observe the strength and acuteness of his mind. His countenance is strongly marked, and deep, piercing black eyes convince you at a single glance of his resources. Plain and modest in his demeanor, he gains not your attention by surprise, but insensibly warmed by his subject, interests and engages. Though the matter on which I consulted him was partly professional, and as such, amid the multiplicity of his engagements, of no great consequence, I was struck by his promptitude, accuracy, and distinctness. The case was of an individual nature, and yet he appeared as perfectly well informed, as if it had been the last subject of his thoughts. He is a most industrious and indefatigable man, and by the consent of all parties, of accomplished genius and great acquirements. I should think him not less interesting in private life. He carries in his face the ingenuousness of an honest heart, attached to domestic studies.

. . . . .

Unfortunately, I shall not be able to visit Mount Vernon, the distance is only fourteen miles; but the fatigues of my travels have already pressed heavily, and time admonishes me to look towards my native home. Yes, my dear friend, in that little word "home" is comprised almost all that perma-

nently awaken our hopes and our feelings; and at this distance, I view it with the "*maladie du pays*" and fondly cast a longing, lingering look towards it. Would to God, that like yourself, I could boast a home where love would open its arms to receive me, and pleasure sparkle in the welcoming smile. I am a wanderer on the world's wide stage, and though here and there a pleasure meets me, it is solitary. I have no bosom to which I may impart it, and cherished in my own, it withers and dies. On some occasions this thought oppresses me with gloomy doubts, and I look to futurity with scarce a glimmering of joy. Life without a domestic friend is dreary and comfortless; and of all men in the world, I am the least calculated to endure it. Yet though deeply persuaded of this truth, I feel an almost insurmountable repugnance to overcome recollections which unfit me to admire the living. But I will not dwell a moment on this subject. It forever leads me to murmuring and complaints, and suits as little with my own as with your wishes.

Most cordially, your friend,

J. STORY.

Philadelphia, June 10th, 1807.

HONEST MATTHEW BRAMBLE:

While at Baltimore I had the pleasure of seeing almost all their great lawyers, with the exception of Luther Martin. Mr. Harper was very polite in his attentions. Judge Dorsey, Judge Nicholson, Judge Huston, and Chancellor Kilty, and a number of very pleasant advocates, were within the circle of my acquaintance. They do not look like the black-lettered scholars of the Inns of Court; but are pleasant and frank in their manners, and, as I understand, well versed in the general subjects of juridical consideration. The District Court was sitting, and I occasionally indulged myself in hearing the arguments of counsel. But my time was so much more



agreeably passed in converse with ladies, that the Court House was no object of curiosity to me. I will not venture therefore to give you a general character of the Bar. Thus much, however, may be affirmed, that a man of talents, well versed in his profession in Massachusetts, need not shrink from an honorable competition. His struggle would not be very long nor very laborious.

Accompanied by Mr. Harper, I paid a visit to Judge Chase, who is a rough, but very sensible man. He has counted nearly seventy winters, and yet possesses considerable vigor and vivacity; but the flashes are irregular and sometimes ill-directed. In his person, he is tall, and not unlike Parsons. I suspect he is the American Thurlow,—bold, impetuous, overbearing, and decisive. He received us very kindly and with all his plainness of manners, I confess that he impressed me with respect.

Adieu, adieu.

J. S.

TO SAMUEL P. P. FAY, ESQ.

New York, June 18th, 1807.

MY DEAR FRIEND:

Yesterday, George and myself essayed a march to Jamaica, crossed the river to Long Island, and at four, found ourselves quietly in the company of Mr. Rufus King. He received us with great kindness, and during two hours I heard his conversation with much earnestness and instruction. He is a well-built man, rather inclining to corpulence, easy in his deportment, and polite in his manners. He speaks with fluency and precision, and with the calmness of a man who is master of his subject. Judge Benson was present, and as they were engaged in some diplomatic remarks, I could not but observe the great superiority of Mr. King in the controversy. As a young man and a stranger, I preserved silence, and yet listened with rigorous keenness.



The coachman loves the smack of the whip, the war-horse paws for the sound of battle, and the senator longs for the rumors of contention. Rufus King could not disguise that he was a statesman, and after a few inquiries respecting Massachusetts worthies, he ran through all the changes of treaties, and touched each favorite key with diplomatic skill. If I were permitted, on so slight an examination, to sketch his mind, I should say, that it was strong rather than energetic, elegant rather than commanding, with the polish of careful culture rather than the sparkling lustre of deep and solid genius. He has ornamented his mind with classic and useful literature, with various and interesting science, and with select and enlightened politics. In the career of ordinary state duties, he would conduct himself with great skill and correctness; in the intricacies of contentious policy, he would be dexterous and subtle; but in the storms of national conflicts, in the fury of revolutionary zeal, he could neither direct its force, nor command its results. He wants the master-key of original and independent greatness, the overwhelming energy of Chatham, or the daring and dazzling firmness of William Pitt. In short, my dear friend, he would grace the domestic cabinet, and honor the foreign bureau; he would gain respect abroad and confidence at home; but he could not wield the destinies of nations, nor fix in its solid centre the vacillating glory of a divided people. Have I said enough? or rather have I not said too much? I know well the presumption of judgment at such short views, and I fear that in this instance I am governed more by speculative, ideal colors, than by nature and truth. The desire of drawing a character, and the vanity of giving to the sketch a little opposition and contrast, may delude me, as it has often deluded others. Not one word more of apology.

. . . . .

Heaven grant us a joyous meeting. In haste.

Yours,  
J. S.

TO SAMUEL P. P. FAY, ESQ.

On board the Packet Ann, Sunday Morning, June 21st, 1807.

MY DEAR FRIEND:

The court have held their sittings after term, for the trial of criminal and civil causes in the city, since my return here, and though I have not heard the abler advocates speak, yet the Bar have, in some degree, passed in review before me. Kent, the Chief Justice, presided with his singular plainness and promptitude; the counsel seem in the habit of very long and elaborate arguments, and diffuse their thoughts over a length of surface which exceeds all reason and all good effect. We despatch business with quite as much celerity, and as much judicial skill; nor should we decline a contest with their ablest lawyers, in any causes which require eloquence or learning. The more I see and hear in this respect, the more am I satisfied that Massachusetts has no reason to resign her legal rank. Harrison is considered the first and ablest chamber-counsel in the state; and the modesty of his deportment, and the softness of his voice, prepossess you that he is very amiable, and very accomplished in his science. But he wants specific greatness, original and striking energy, and a bold superiority to the mere reasoning of authorities. He would apply settled principles with great precision, but it may be doubtful if he could create elementary ones. I know you understand me, and it is unnecessary to delineate farther. The court room is very small and inelegant. It resembles the bar-room of a tavern more than the Hall of Justice. The jury, witnesses, and spectators are crowded into a narrow space, and it is difficult to say who are the one or the other. The counsel are not elevated, but stand on the level floor, and talk very much as you and I should, if we were addressing referees. On the whole, the appearance is wholly undignified. A prisoner was tried the other day for forgery, and though the



crime is punished with imprisonment to hard labor for life, there was as little bustle as would be in a Justice Court, in deciding upon the petty larceny of a pewter spoon. Kent summed up to the jury in a very short and loose manner, and afterwards, in pronouncing sentence on the convict, stated the sentence with the celerity of a school-boy repeating his task. I must however tell you, that he has the confidence of a great lawyer in all his actions, and is self-poised on his own resources. . . .

Herewith receive my best salutations, and learn that I shall pay most deference to the sentiments of Harriet, in all affairs of the heart.

Truly and affectionately, yours,

J. S.

TO SAMUEL P. P. FAY, ESQ.

Washington, February 13th, 1808.

MY DEAR FRIEND:

For several days I have been silent. The business of my mission has occupied my time; and in attendance on the great councils of the nation, I have studied the characters and the views of their members. The Senate and House of Representatives and the Supreme Court of the United States, have received frequent visits; and as the latter is at present graced with the first counsel of Pennsylvania and Maryland, I have witnessed the profession in all its glory.

The Hall of the Representatives is indeed a most magnificent structure, and though in some parts unfinished, is very imposing; but the spectator in the gallery must content himself with the employment of his eyes, on account of the size of the room, and the reverberations from the stupendous colonnade, which break the voice in almost every direction. Randolph is unfortunately confined by a severe accident, and in the residue of the house I have not marked as yet a single man of transcendent talents. Some good speakers who want



science, and some men of science who are not good speakers, are said to belong to it. Rowan of Kentucky is considered to be a bold, independent lawyer, attached to Randolph. Key of Maryland has the reputation of accomplished elegance. Others I might select, but it is not important; "the newspapers will tell the rest."

I am told that there are fifty members in the House who mingle in debate. I say mingle, because many of them must confuse and embarrass, without enlightening; and many must talk without matter or point. A majority are comparatively young, and not unfrequently the vehemence of invective, or the hardihood of assertion, flow from lips whose juvenility would protect them from any response. Upon a nearer view, I am not much disposed to admire; it would not be high praise to surpass many; and to command the lead of debate would hardly awaken the ambition of a statesman. I am not sure that Smilie and Sloan and Findley are not the first in influence. If you believe that I sport in irony, I fear that actual experience would not confirm you in the belief.

The Senate, generally, is composed of men of ripe years and respectable appearance. Yet I am assured, in a manner which leaves little doubt, that in talents the house is greatly superior. Bayard, Giles, and Hillhouse are the first of senatorial champions. Let me add a fourth, who is Adams.

Hillhouse is a very fine, venerable old man, full of sound sense and plain-heartedness. He is worthy of his seat. Bayard I have not yet heard speak; he is a large, striking figure, and seems not unworthy of his fame. Giles exhibits in his appearance no marks of greatness; he has a dark complexion and retreating eyes, black hair and robust form. His dress is remarkably plain, and in the style of Virginia carelessness. Having broken his leg a year or two since, he uses a crutch, and perhaps this adds somewhat to the indifference or doubt with which you contemplate him. But when he speaks, your opinion immediately changes; not

that he is an orator, for he has neither action nor grace; nor that he abounds in rhetoric or metaphor, but a clear, nervous expression, a well-digested and powerful condensation of language, give to the continual flow of his thoughts an uninterrupted impression. He holds his subject always before him, and surveys it with untiring eyes; he points his objections with calculated force, and sustains his positions with penetrating and wary argument. He certainly possesses great natural strength of mind; and if he reasons on false principles or with sophistic evasions, he always brings to his subject a weight of thought, which can be shaken or disturbed only by the attack of superior wisdom. I heard him a day or two since in support of a bill, to define treason, reported by himself. Never did I hear such all-unhinging and terrible doctrines. He laid the axe at the root of judicial power, and every stroke might be distinctly felt. His argument was very specious and forensic, sustained with many plausible principles, and adorned with various political axioms, designed *ad captandum*. One of its objects was to prove the right of the legislature to *define* treason. My dear friend, look at the constitution of the United States, and see if any such construction can possibly be allowed. I heard him with cool, deliberate attention, and I thought that he could be answered with triumphant force. He attacked Chief Justice Marshall with insidious warmth. Among other things, he said, "I have learned that judicial opinions on this subject are like changeable silks, which vary their colors as they are held up in political sunshine." You shall hear from me *intimately* respecting the judges and bar, hereafter. With my salutations to your household, "faithful found among the faithless," your affectionate brother,

MATTHEW BRAMBLE.

The next letter is addressed to his brother-in-law, Mr. White,



TO MR. JOSEPH WHITE, JR.

Washington, February 13th, 1808.

MY DEAR FRIEND:

Since I left you I have hardly had time to compose my thoughts for any purpose connected with my friends at home, and have therefore contented myself with hasty scrawls to them as I passed from place to place. I am now quietly reposing in this city, after great fatigue, and have little else to do than yawn over uninteresting pamphlets, or follow with humble diligence the tardy steps of Congress. My business, indeed, occupies my time continually, but it is that sort of occupation which is nearly allied to idleness, and consists in watching the progress of things, and simply waiting for the moment of success. A week has already passed away in this manner, and I have little satisfaction in knowing that another will succeed in the same tenor. Things magnify wonderfully at a distance. At Salem you are probably asking continually, what news from congress? When will the embargo be raised? What are the appearances as to war or peace? Let me tell you, that no one here conjectures at all respecting these things. An absolute supineness overwhelms all; the great commercial interests are not felt; the anxious wishes of the country are scarcely whispered. No one seems to imagine any period to the embargo; and it is understood that Congress will soon adjourn without taking it off. As to Mr. Rose's mission, various and contradictory reports are continually circulating. It is impossible to know what to believe. I am of opinion that he will make peaceful arrangements with us; but I draw this conclusion from general reasoning, as much as from particular hints and statements. It begins to be understood here that France is not pleased with our conduct, and that she will resent any adjustment of our difficulties with England; but I regret that our true interests, and our intimate relations with England, are not understood here. There is in Congress a great want of knowledge on



our foreign concerns, and commerce must be the innocent sufferer. I wish you could have a birdseye view of the scene, and you would not greatly undervalue our State Legislature.

I passed Tuesday evening at Mr. Erskine's, and was introduced to Mr. Rose; he is apparently about thirty-eight or forty years of age, and converses with great fluency, and not inelegantly. There is, however, in him that peculiarity which distinguishes all his countrymen; I mean a slight awkwardness of address, and a hasty, confused, and mumbling enunciation. The words flow into each other. He is reputed to be a man of talents, and it does not require much sagacity to perceive that he is fairly entitled to his reputation. It is the privilege of intimacy to estimate the extent of his powers, and I therefore cannot pretend to measure them with exactness. I have not that intuition which some men profess, and which enables them sometimes "to see what is not to be seen."

Of the speakers in Congress I can hardly say any thing to you interesting. There is a great deal of talk, but little of oratory. Mr. Randolph is confined by sickness, and the other speakers of the first class, (for there are such of all classes,) are very quiet amid the discussions of the Sloans and Slocums of the House. . . .

Your affectionate brother,

JOSEPH STORY.

TO SAMUEL P. P. FAY, ESQ.

Washington, February 16th, 1808.

MY DEAR FRIEND:

I regret very much that I have not received a syllable from you since I bade you farewell at Cam; and did not the cares of a family, and the thousand interests of clients, form an apology, I should deliver you over to a hospital of incurables. Here I am in the wilderness of Washington, passing day after day in sauntering from one point to another, with no distinct object of interest, and with many an unpleasant

reflection. In truth, on a near approach, I find that my imagination had greatly swelled the magnitude of things. The nearer you advance to the centre of motion, the more imperceptible it becomes. It is not at the axis, but at the circumference that the violence of action is felt. Every thing here seems in a dead calm. While the whole nation are anxiously looking upon Congress, a stupor, or an indifference, pervades that body. You cannot form any correct opinion of the good-humored complacency with which it consents to do nothing.

The scene of my greatest amusement, as well as instruction, is the Supreme Court. I daily spend several hours there, and generally, when disengaged, dine and sup with the judges. One cause only has been argued since I came here, and that was concluded to-day, after occupying a space of nine days! Almost all the eminent counsel of the adjoining States were engaged in it. I ought, perhaps, to say of several States. The truth is, that there were several causes from South Carolina, Pennsylvania, and Maryland, depending nearly on the same facts, and the Court heard the gentlemen who attended in each, as if upon a single case; Harper, Martin, Tilghman, Ingersoll, Dallas, Duponceau, Lee, and Rawle, argued in succession. Shall I give you a passing sketch of some of them? However slight, I know it cannot fail to interest a professional man.

Harper is diffuse, but methodical and clear; he argues with considerable warmth, and seems to depend upon the deliberate suggestions of his mind. I incline to think that he studies his cause with great diligence, and is to be considered as in some degree artificial. Duponceau is a Frenchman by birth, and a very ingenious counsellor at Philadelphia. He has the reputation of great subtilty and acuteness, and is excessively minute in the display of his learning. His manner is animated but not impressive, and he betrays at every turn the impatience and the casuistry of his nation. His countenance is striking, his figure rather awkward. A



small, sparkling, black eye, and a thin face, satisfy you that he is not without quickness of mind; yet he seemed to me to exhaust himself in petty distinctions, and in a perpetual recurrence to doubtful, if not to inclusive arguments. His reasoning was rather sprightly and plausible, than logical and coercive; in short, he is a French advocate. Tilghman is quite an old man, of an unpromising appearance; his face indicates rather a simplicity and weakness of character. Indeed, when I first saw him, I could not persuade myself that he possessed any talent. I heard his argument, and it was strong, clear, pointed, and logical. Though his manner was bad, and his pronunciation not agreeable, every person listened with attention, and none were disappointed. Rawle is quite a plain but genteel man, and looks like a studious, ingenious, and able lawyer. He argues with a very pleasant voice, and has great neatness, perspicacity, and even elegance. He keeps his object steadily in view; he distinguishes with care, enforces with strength, and if he fail to convince, he seldom spends his thoughts vainly. Ingersoll has rather a peculiar face, and yet in person or manner has nothing which interests in a high degree. He is more animated than Rawle, but has less precision; he is learned, laborious, and minute, not eloquent, not declamatory, but diffuse. The Pennsylvanians consider him a perfect drag-net, that gathers every thing in its course. Dallas is a book-man, ready, apt, and loquacious, but artificial. He is of a strong, robust figure, but his voice seems shrill and half obstructed. He grows warm by method, and cools in the same manner. He wearies with frequent emphasis on subordinate points, but he cannot be considered as unscientific or wandering. Lee, of Virginia, is a thin, spare, short man; you cannot believe that he was Attorney-General of the United States. I heard him speak for a few minutes, but the impression is so faint that I cannot analyze it. Perhaps I shall touch him at a future time.

Shall I turn you to Luther Martin, that singular compound of strange qualities? With a professional income



of \$10,000 a year, he is poor and needy; generous and humane, but negligent and profuse. He labors hard to acquire, and yet cannot preserve. Experience, however severe, never corrects a single habit. I have heard anecdotes of his improvidence and thoughtlessness which astonish me. He is about the middle size, a little bald, with a common forehead, pointed nose, inexpressive eye, large mouth, and well formed chin. His dress is slovenly. You cannot believe him a great man. Nothing in his voice, his action, his language impresses. Of all men he is the most desultory, wandering, and inaccurate. Errors in grammar, and, indeed, an unexampled laxity of speech, mark him everywhere. All nature pays contribution to his argument, if, indeed, it can be called one; you might hear him for three hours, and he would neither enlighten nor amuse you; but amid the abundance of chaff is excellent wheat, and if you can find it, the quality is of the first order. In the case to which I have alluded, he spoke three days! I heard as much as I could, but I was fatigued almost to death. He did not strike me at all, and if I were to judge solely from that effort, I should say that he was greatly overrated. But every one assures me that he is profoundly learned, and that though he shines not now in the lustre of his former days, yet he is at times very great. He never seems satisfied with a single grasp of his subject; he urges himself to successive efforts, until he moulds and fashions it to his purpose. You should hear of Luther Martin's fame from those who have known him long and intimately, but you should not see him.

Adieu! adieu! The dial points closely on eleven at night. When you write, on receiving this, direct to me at Philadelphia. I long to quit this place, and be in the society of a *real* city. Give my love to Harriet, and kiss the boys for me. In all sobriety of soul, I am your vapory friend,

MATTHEW BRAMBLE.

The next letter was to his brother-in-law, Mr. Fettyplace.

TO MR. WILLIAM FETTYPLACE.

Washington, February 28th, 1808.

MY DEAR FRIEND:

I had anxiously hoped that before this time I should have directed my movements homeward, but the delays and the pauses of public bodies exceed all belief, and wear out all patience. Nothing interesting occurs here which is worth peculiar notice, and I should hardly have deemed it important to write to you, except with the view to show you that I remember you on all occasions and at all distances.

Doubtless you have received information respecting the late decrees of Bonaparte at Milan, and you must feel a great desire to know what course our government will pursue in respect to foreign relations. I hardly know in what manner to speak on this subject. Commerce has many vehement opposers here, and particularly among the southern gentlemen. It seems to me that an idea prevails that it is a tax upon their agricultural interests. Of course, whatever may be the views of the administration, I doubt if any adequate protection will be given to it. The embargo is more and more a favorite measure here, and its object is *not temporary*; a complete non-intercourse seems to be considered as a permanent measure of retaliation upon the European powers. You ought, therefore, to be prepared to suspend all commercial pursuits for the present, and I can hardly imagine when a different course will be adopted. In truth, from what I can learn, there is not the most distant intention to raise the embargo, and if the reasonings of gentlemen on the subject be admitted, they even consider that its duration for a year or two would not be a serious evil. Is the impression so in New England? Are our merchants prepared to give up all commerce? If the commercial cities do not remonstrate, it is not improbable that Congress will adjourn without limiting the duration of the embargo.

Indeed, our country is in a very critical situation. And it



is very difficult for even the wisest men to decide what course will be the best. The situation of Great Britain and France, their continual inroads on neutral rights, and their apparent determination to stake their existence upon the present contest, render the fear that we must be involved in war almost prophetically certain.

I have had the pleasure to hear from Salem several times since my arrival here, and amidst all the melancholy of my mind, it has been no small consolation that my friends at home are happy.

Excuse my haste. I have stolen these few moments. May heaven bless and preserve you all. Kiss little Mary for me, not more in joy than in sorrow for ———, but not a word on this subject.

Your affectionate friend and brother,

JOSEPH STORY.

TO SAMUEL P. P. FAY, ESQ.

Washington, February 25th, 1808.

MY DEAREST FRIEND:

. . . Let me turn to a more pleasant subject. I have told you that I am frequently with the Judges, and you will expect from me some touches at character painting. I am not in the best mood to perform the task at this moment, but you shall have a passing picture. The bench consists of Marshall, Chase, Cushing, Washington, Livingston, Johnson, and Todd. Marshall is of a tall, slender figure, not graceful nor imposing, but erect and steady. His hair is black, his eyes small and twinkling, his forehead rather low, but his features are in general harmonious. His manners are plain, yet dignified; and an unaffected modesty diffuses itself through all his actions. His dress is very simple, yet neat; his language chaste, but hardly elegant; it does not flow rapidly, but it seldom wants precision. In conversation he is quite familiar, but is occasionally embarrassed by a hesitancy and drawling. His thoughts are always clear and



ingenious, sometimes striking, and not often inconclusive; he possesses great subtilty of mind, but it is only occasionally exhibited. I love his laugh,—it is too hearty for an intriguer,—and his good temper and unwearied patience are equally agreeable on the bench and in the study. His genius is, in my opinion, vigorous and powerful, less rapid than discriminating, and less vivid than uniform in its light. He examines the intricacies of a subject with calm and persevering circumspection, and unravels the mysteries with irresistible acuteness. He has not the majesty and compactness of thought of Dr. Johnson; but in subtle logic he is no unworthy disciple of David Hume.

Washington is of a very short stature, and quite boyish in his appearance. Nothing about him indicates greatness; he converses with simplicity and frankness. But he is highly esteemed as a profound lawyer, and I believe not without reason. His written opinions are composed with ability, and on the bench he exhibits great promptitude and firmness in decision. It requires intimacy to value him as he deserves.

Livingston has a fine Roman face; an aquiline nose, high forehead, bald head, and projecting chin, indicate deep research, strength, and quickness of mind. I have no hesitation in pronouncing him a very able and independent judge. He evidently thinks with great solidity, and seizes on the strong points of argument. He is luminous, decisive, earnest and impressive on the bench. In private society he is accessible and easy, and enjoys with great good humor the vivacities, if I may coin a word, of the wit and the moralist.

Of Chase I have formerly written. On a nearer view, I am satisfied that the elements of his mind are of the very first excellence; age and infirmity have in some degree impaired them. His manners are coarse, and in appearance harsh; but in reality he abounds with good humor. He loves to croak and grumble, and in the very same breath he amuses you extremely by his anecdotes and pleasantry. His first approach is formidable, but all difficulty vanishes when you

once understand him. In person, in manners, in unwieldy strength, in severity of reproof, in real tenderness of heart; and above all in intellect, he is the living, I had almost said the exact, image of Samuel Johnson. To use a provincial expression, I like him hugely.

I ought not to pass by Judge Johnson, though I scarcely know how to exhibit him individually. He has a strong mathematical head, and considerable soundness of erudition. He reminds me of Mr. Lincoln,<sup>1</sup> and in the character of his mind he seems to me not dissimilar. He has, however, less of metaphysics, and more of logic.

This is the first time of Judge Todd's appearance on the bench, and as he is a modest, retired man, I cannot delineate him. He does not appear to want talents.

I have struggled through the gallery of portraits, not much, I confess, to my own satisfaction. But you must content yourself with the consideration that as I am more phlegmatic than usual, the approach is so much nearer the truth. Had I been in high spirits, you would probably have had the airy phantoms of fancy. . . .

As ever, the fretful

MATTHEW BRAMBLE.

To a nature so social and demonstrative the idea of a solitary life was repulsive. As his grief wore away, and he became interested in society, his desires stretched forward, timidly but decidedly, towards a life which should not be without its

"intimate delights,  
Fireside enjoyments, homeborn happiness."

In his solitude he longed for a home, and for the charms of sympathy and love. The prize of office and fame,

<sup>1</sup> Hon. Levi Lincoln, Attorney-General under Jefferson, and father of Hon. Levi Lincoln, Governor of Massachusetts.



grateful as they were to his ambition, did not satisfy the demands of his heart. His aimless affections required to be concentrated, and though doubtingly at first, he soon listened to the flattering voice of hope. From beneath the cloud of sorrow the sunlight began to gleam.

In the beginning of the year 1808, he became interested in Miss Sarah Waldo Wetmore, (my mother,) and before it had elapsed he was affianced to her. Her father, Hon. William Wetmore, was a lawyer of distinction in Boston, and a Judge in the Court of Common Pleas. Her mother was the grand-daughter of Brigadier-General Waldo, so well-known in the provincial annals of this country. She had been the intimate friend of my father's first wife, and was related to her by marriage, and the esteem and affection, which had begun during his previous marriage, now matured into love. The news of his engagement he thus announces to his brother-in-law:—

TO MR. JOSEPH WHITE, JR.

Boston, May 28th, 1808.

MY DEAR BROTHER:

If you are in company, at home or abroad, when you receive this letter, perhaps you may as well fold it up in silence. Will it be a surprise to you that again I am awakening to the influence of love, and again am seeking the happiness of domestic life? Many years have been devoted to sorrow and to regret, and my youth has wasted away in the solitary gloom of a single life. I have long wished to change this irksome state for one more congenial to my feelings and my habits, but a thousand circumstances have repressed the consideration. My difficulty in meeting with an individual to whom I could offer the free homage of



my heart in sincerity, has opposed an insuperable obstacle. No motive but that of affection could ever find a place in guiding my choice, and how few, how very few, in the circles of polite life, unite the qualities to form domestic felicity. Thanks be to God! all my doubts and apprehensions have vanished. I am now an affianced lover, to one whom my heart most sincerely reverences and admires. Shall I tell you that this gentle being is Sally Wetmore? I have known her long, very long, and have always respected her excellent character. Esteem has ripened into affection, and she whom in the circles of friendship I always sought with delight, has now become the first in my heart. I ask your congratulations to me on this occasion, and I know that you will feel pleasure in learning that I shall soon have a home to which to welcome you and yours. . . .

Yours affectionately,

JOSEPH STORY.

A letter of later date announces his marriage.

TO SAMUEL P. P. FAY, ESQ.

Monday, August 28th, 1808.

MY DEAR FRIEND:

I bless my good stars that, at half past six yesterday morning, I received from the hands of Parson Eaton a wife. We were married at the North Church, dined in Boston, and drank tea in Salem, at our own house. Here we shall rejoice to welcome you and Harriet, and believe me, in truth, we both love you and her very sincerely. May our friendship find in this new connection an additional tie to fix its everlasting permanence. My wife is at my elbow, with my sister Harriet. They are happy: Heaven grant we may all long be so!

Yours affectionately,

JOSEPH STORY.

P. S. There is a small package containing a piece of bri-

dal cake, which is left at Judge Wetmore's, in Winter Street; pray, if in town, get it for our young friends to dream over.

In January, 1809, began his duties in Congress. During his brief connection with this body, there were two very important questions in which he took part, — the repeal of the embargo, and the augmentation of the Navy.

The part he took in the repeal of the embargo first claims attention. He had never been fully persuaded of the policy of this great measure of Mr. Jefferson's administration; but after its adoption, he thought it entitled to a fair trial, believing that opposition, by impairing its force as an expression of public sentiment, would destroy its only chance of success. He had, however, always considered it as a *temporary* expedient, to be abandoned in case it failed to produce the desired result. But upon his arrival in Washington he became convinced, from conversation with the leading men, that it was to be upheld as the permanent policy of the government, and though introduced as a defensive measure, it was to be continued as an exclusive and coercive one; the apparent object of Mr. Jefferson being to destroy the commercial interests, with a view of rendering the country self-subsistent. My father had always been doubtful of the expediency of a policy such as this, but to its establishment as a permanent system, he was entirely opposed. Already its results had been disastrous to the commerce of the sea-board States, and particularly to New England, which was then almost wholly commercial in its enterprise, while it had failed to produce the anticipated benefit to the

rest of the country. In view of these facts, with that true independence, which is not to be terrified by the cry of inconsistency, but bravely dares to acknowledge an error, he exerted himself to effect its repeal, though at the expense of party popularity. Convinced that it had failed in its objects, he strenuously advocated its abandonment, before it should entail complete ruin on the commerce of the country. Mr. Jefferson very bitterly resented the action which he took; and many efforts were made by him and his friends to induce my father to change his ground. But he was not to be moved. Supported as he was by many of the wisest men of both parties, he felt secure in the conclusions of his best judgment. His plans and opinions on this subject will plainly appear from the following letters written at this time.

TO MR. JOSEPH WHITE, JR.

Washington, December 31st, 1808.

MY DEAR BROTHER:

I thank you for your letter of the twenty-fifth instant, which I received last night. As to the riotous proceedings in Beverly, they disgrace only the actors, and I trust that old Essex will sustain its general character for good behavior.

I wrote you lately respecting the general measures of the administration; they will not retreat from the ground which they have taken. The embargo will undoubtedly not be continued beyond June; if foreign nations do not then repeal their edicts, war will be declared. For this purpose Congress is to be convened in May. The manner in which these effects are to be accomplished is not perhaps yet matured, and there still remains a hope, that on the receipt of the documents now published in England, she will repeal her orders. In



fact we are assured from unquestionable sources, that the most false impressions have been made upon the British Cabinet by our citizens; that they have exaggerated in every way the discontents of our people, and that but for these exaggerations, the British Ministry would have accepted our propositions made last summer. How deeply criminal, then, are those who have fomented our divisions, and have sacrificed the rights and interests of our country at the footstool of a foreign power! On this subject, after reading the private despatches, and conversing with the Secretary of State, I have no doubt. The day must come when the enemies of their country will repent their conduct. The Administration are desirous of peace. They believe that we must suffer much from war; they are satisfied even now, that if the embargo could be continued for one year, our rights would be acknowledged, were our own citizens only true to their interests. They deem this continuance impracticable, and therefore are of opinion that after midsummer, the plan must be abandoned, and war will then ensue, unless the belligerents abandon their aggressions. . . .

I wish Mr. Gray to understand that his conduct has gained him the highest respect in every part of the Union. The Administration view him as one of the most truly honorable patriots in the country. Mr. William Smith, of South Carolina, a distinguished member of a former Congress, and a Federalist, is decidedly an advocate for the administration.

I wish you would write me immediately the opinions of our friends in Salem, on the subject of the embargo. You will see in the Monitor of this day, a speech of Mr. Gardiner, which uses harsh language towards me. You will please to correct the printer's error; Mr. G. did not allude to me, and I have now in possession a letter from him to me, very handsomely denying the application. . . .

Yours, affectionately,

JOSEPH STORY.

TO MR. JOSEPH WHITE, JR.

Washington, January 4th, 1809.

MY DEAR FRIEND :

Several days have elapsed, and I have not received a single syllable from you. Why is all this delay? I pray you to write me fully and freely on the subjects which deeply interest us.

We have not yet matured a plan of operations. There is a considerable degree of diversity of sentiment on the question of continuing the embargo beyond the fourth of March. If I may judge from the letters I have seen from the various districts of Massachusetts, it is a prevalent opinion there,—and, in truth, many friends from the New England States write us,—that there is great danger of resistance to the laws, and great probability that the Essex Junto have resolved to attempt a separation of the Eastern States from the Union; and if the embargo continues, that their plan may receive support from our yeomanry. What do you think on this subject? . . .

If I can credit what I here learn, as existing in Massachusetts, the embargo ought not to be continued beyond the fourth of March. The discontents of the people, and the delusions with which they are infatuated, almost preclude the hope of benefit from its continuance. A non-intercourse with Great Britain and France, and repeal of the embargo as to the rest of the world, though liable to many serious objections, would probably lessen the sources of discontent, and yet not be an abandonment of our position. What think you as to the plan?

I have not definitely made up my own mind on the subject; the Southern States are all for a continuance; the Middle and Western are ready to unite in any measure. But with very few exceptions, the Republicans from New England receive almost every day letters which urge a repeal.



In this multitude of opinions, which one ought to be followed?

I am in good health, and write too rapidly to give you any satisfactory view of public measures.

Yours, affectionately,

JOSEPH STORY.

TO MR. WILLIAM FETTYPLACE.

Washington, January 14th, 1809.

MY DEAR BROTHER:

. . . Will you also believe it? C. Cotesworth Pinckney, the Federal candidate for President, is in favor of the embargo, though his friends have taken care that it should not be generally known, until all chance of its producing an effect was over.

The double duty bill will not pass, I think, without great discriminations. The drawback will be allowed as usual; the bill for extending credit on revenue bonds has passed. There is some diversity as to the time when the non-intercourse shall take place; some are for the first of June. However, this is a subject on which great men differ, and probably an earlier period, and possibly a short one will be fixed. I am decidedly for a very early period.

You will have seen the new embargo act before this reaches you; a tremendous noise about it has been made on the floor of Congress, and in the public papers. In truth, however, almost all the leading principles are incorporated in the ordinary revenue laws; they are only applied to a new subject. One amendment, (and indeed all the amendments to it, were proposed by myself, in a select committee,) is to employ thirty private armed vessels to guard our coasts. This was cheerfully agreed to by the Southern Republicans, to aid Marblehead and other fishing towns. The Federalists were all against it, and I believe that they did it out of the pure consideration that Marblehead was unchangeable in its politics.



The authority to permit vessels to go for property has been repealed. I applied, on my first arrival, to Mr. Gallatin, but he assured me that no permissions under any circumstances, would be granted. Of course, we must submit to the ordinary course.

The provision in the embargo act respecting drawbacks will be continued. It would operate hardly, and I believe has been abandoned. In fact, the members here exercise a great degree of independence, and are very far from adopting all the measures proposed by the departments. Nothing is more unfounded than the idea that they merely register the edicts of the Administration. It is all of the same stuff as the stories about hatred to commerce by the Southern gentlemen. On this subject I find them liberal. Mr. Giles, who is a host, is one of the warmest advocates for commerce that I have ever known. He is a great friend to the Eastern States, and said to me the other day, that all the injustice of Great Britain and France would not affect his mind half as much as the disaffection of any of the Eastern States.

By the way, I rejoice that you speak so cheerfully of New England. I hear so many stories of rebellion and discontent, and so many letters reach us of hatred to the embargo, that at times we almost despond. We fear that there is not virtue enough to save the country, or its rights. You can have no idea how far the perturbed imaginations of some gentlemen in Massachusetts go in painting the discontents of the people.

I shall urge, with all the powers I possess, a discrimination in laying the duties; I believe that if it be ever proper, now is not the time, and the reasons you urge for a discrimination are to my mind conclusive.

I write you with a flying pen, for my duties are so various and urgent, that I have no opportunity to examine what I write; you will therefore make an index of the errata for yourself.

My return to Massachusetts will be on the twentieth instant, pressed by professional engagements. I should be pleased on some accounts to be here, but as we are generally agreed as to the principal measures, and they are in a train for adoption, I can quit without much difficulty.

I shall send you an excellent pamphlet, which has just appeared here, written by Mr. Granger. It is an ample and vigorous defence of the Administration, in a style calculated to strike New Englanders, to whom it is addressed.

Give my love to my mother and Hitty, and kiss both the little children for me.

Your sincerely affectionate brother,

JOSEPH STORY.

TO SAMUEL P. P. FAY, ESQ.

Washington, January 9th, 1809.

MY DEAR FRIEND:

My own impressions of the most proper course to be pursued at present, after the most deliberate consideration which I have been able to give the subject, are, that the embargo should be repealed, a non-intercourse with France and Great Britain be adopted, and trade with the rest of the world opened. Connected with this, I would authorize our merchants' ships to arm in their *defence*, to protect themselves in any lawful trade against hostile attacks. The nation should at the same time be put into a state of actual, not imaginary defence. Our Navy should be increased to an extent within our resources, but adequate to the maintenance of our sovereignty on our coasts. A select army of twenty-five thousand troops should be authorized and enlisted for prompt service. I would for half a year persist in a system of peace, with the avowed design to invite foreign nations to a reconciliation. After six months, I would authorize letters of marque and reprisal against the bellige-



rent which should persist in her orders or decrees; but by this I do not mean to declare war, but only a resistance of all search attempted upon our vessels pursuing a lawful commerce. If other nations should choose to drive us into a direct public war, let them do it; if they should not, this intermediate state of hostility would support our maritime rights.

This system is certainly not without its difficulties; and yet, considering the situation and character of the American people, I am not aware that any other would embrace so many advantages with so few evils.

I have submitted this scheme to friends, and to persons high in authority. Some are ready to adopt it, but many are fatally wedded to other systems, which, I fear, promise a continuance of our evils, without a correspondent benefit.

It may appear strange to you, and it certainly does to me, but it is true that many honest and intelligent politicians in Congress are attached to the embargo, with a degree of enthusiasm which makes them insensible to all the intrinsic, as well as extrinsic difficulties, of its execution. They believe that it will change its character, and after having served as a *precautionary*, will now perform miracles as a *coercive* measure.

Were this opinion prevalent among a few ignorant or unenlightened men, it would excite no remark. But it really prevails among some persons who are of a strong character of mind, and considerable depth of knowledge. Another class of men of equal respectability are in favor of open war, and this immediately. They urge the necessity of it, notwithstanding the defenceless state of our country, and appear fixed in their resolution to urge it on all occasions. These are, however, few in number.

Another class, and that by far the most numerous, are decidedly of opinion that we ought not to advance in any farther measures, but to preserve the present system; not because they are strong believers in its efficacy, but because



it gives us the chance of the chapter of accidents in Europe. They consider that Spain and Portugal are to decide our contest, and that if the patriots of those countries fall, Great Britain will relax her system. Connected with this class I may name another, who live upon the expedients of the day and neither care what is or ought to be done, but drudge from day to day through the labyrinth of our intricacies, without a guide or the wish for a guide.

These various classes are all Republicans, but the Federalists here either have no system, or are determined not to avow any. They persist in opposition to every course, and, I must confess, seem less intent on the interests of their country, than the interests of their own party. They advocate and oppose measures, apparently without any discrimination as to principle, and never put their shoulder to the public wheel on any occasion. I confess that their conduct does not give me much confidence as to their motives of action. It seems bottomed on the common game of political speculations. I may mistake in this particular, and I should rejoice so to do, but the mistake, if one, is very unwelcome and unsatisfactory, and I would seize the earliest opportunity to correct it.

This, my dear friend, is an outline of the political picture, sketched in haste, but I believe not distant from truth. It is gloomy, and yet I know not, with the various character of our country, that it is materially different from the ordinary scene of political collision.

It is uncertain at present what system will be ultimately pursued. The probability is, however, that the embargo will be continued until June, and with a hope of gaining over some friends, I shall vote for this late period, though my private opinion is for a far shorter duration. But I am compelled to adopt the maxim of *cy près* in law, and since there is scarcely a chance to obtain a removal at an earlier period, I have been willing to relinquish my own ground, as it would not receive a general support, and take the next point of

retreat to make a new stand. You must not, therefore, imagine, when you see my name among the nays against repealing the embargo on the fourth of March, that my real opinion is against it; but barely that *at that time*, and for purposes of an *honorable compromise* with my friends, I was willing to let the subject be yet undecided. I assure you that the vote to which I allude cost me some pain, and if I do not succeed in my ultimate object, I shall exhibit a lucid proof of the motive which urged it.

I have perused the confidential letters of Mr. Armstrong and Mr. Pinckney. I am not at liberty to state their contents, but I can say that I am satisfied of two facts: that France has never intended to recede, and that Great Britain would in all probability have acceded to our proposal, but for the war in Spain, and the news of disaffection in our own country. You know that Mr. Pinckney was a leading Federalist when in this country; and though his character has undergone some scrutiny, I am satisfied that he has not changed in his politics. Yet, he relies on the embargo with a degree of tenacity to which I cannot yield my assent. He calculates evidently upon great effects, by a stoppage of the supplies of our naval stores, and our cotton.

The attachment to France has wholly disappeared; I do not hear from any person a single syllable in her favor; and I am persuaded, that as well in the Cabinet as in Congress, there is a total indifference to Bonaparte. I am sure that you will rejoice equally with me in this belief.

One fact of a diplomatic nature which I have learned here, and from authority which I cannot doubt, may be of some consequence, to show you how anxious our government were to adjust our differences with Great Britain. You may remember that the negotiation between Mr. Madison and Mr. Rose was discontinued, upon the question, whether the President's proclamation should be removed or not. Thus stand the *official documents*. Now, I understand that the proclamation formed not the least obstacle to the progress of



the negotiation. Mr. Rose and Mr. Madison had frequent *inoﬃcial* conferences; and it was agreed between them that the proclamation should be revoked, as a preliminary. As soon as this was agreed, Mr. Rose said that he was not permitted to open his lips as to the subject of satisfaction for the attack on the Chesapeake, until other preliminary concessions were made. That the government should disavow, first, the conduct of Commodore Barron, in refusing to give up the deserters, or supposed deserters; second, the conduct of the people of Norfolk, in taking arms. There were some other propositions, which have not been specifically stated to me. Mr. M. informed Mr. R. that these propositions could not be acceded to; and therefore, if insisted on, it was proper that the negotiation should cease where the official correspondence makes it cease.

You will probably be anxious to know what system the Administration designs now to pursue. I cannot give you a definite answer; but probably it will be to this effect. The embargo to continue until June; the non-intercourse to take effect on the same day; Congress to be convened in May, with a view to ultimate measures of redress. In the mean time, an army of 50,000 volunteers, of a peculiar class, to be authorized. It is expected that the pressure of the embargo on Great Britain, by denying her raw materials for her manufactures, and particularly cotton, and by the probable result of the war in Spain, will induce her to relinquish her orders, or modify them in such a manner as may be satisfactory.

Parliament meets this month, and the laws authorizing the continuance of these orders exist only until the end of the present session. It is hoped that at least, by giving time to us to learn the disposition of Great Britain, and the situation of this country, negotiations may be opened which will lead the way to a favorable result. If this expectation should be proved delusory by June, Congress must at that time assume upon itself the alternative of war or submis-



sion. Such seem to be the general views of the friends of the Administration. I have before stated to you my own.

I am sorry to perceive the spirit of disaffection in Massachusetts increasing to so high a degree; and, I fear that it is stimulated by a desire, in a very few ambitious men, to dissolve the Union. I do believe that nothing would be so disastrous as such an event. With the destruction of the present confederacy would come the destruction of liberty, and factions would be generated in every quarter of the country; and the first invader, or the first successful leader in a civil war, would probably either erect an American throne, or partition us out as colonies to the sovereignties of Europe. It seems to me impossible that Massachusetts will ever come to this scheme; yet, I confess that I have my fears, when I perceive that the public prints openly advocate a resort to arms, to sweep away the present embarrassments of commerce. I am, from principle, a sincere lover of the Constitution of the United States, and should deplore, as the greatest possible calamity, the separation of the States.

The Southern States are accused of a hostility to commerce; but this is by no means true, in the extent to which we are taught to believe. The most intelligent gentlemen here are in favor of it in every form. The truth is, that the Southern States have no hostility to commerce, as such; they have a system of reasoning on the subject which is abstract and peculiar; and their opposition to it results less from dislike, than from a fear that all other objects will be sacrificed to it. I find among the representatives from the South many very enlightened and liberal men.

It is impossible for any man, who is not a representative, to appreciate the difficulties he has to encounter, in almost any subject of legislation in Congress. So many ingenious objections, and so many conflicting interests arise, that one is almost ready to decline the support of any proposition. I can very sincerely declare, that I would not continue in the public councils for a salary of \$10,000 per annum.

I find that my paper is exhausted, and must therefore close. I shall return to Massachusetts by the first of February, again to indulge in domestic tranquillity and legal pursuits. I had designed in this letter to give you portraits of some leading men, but must omit it until I write you again.

Depend on it, my dear friend, that like yourself I am no advocate for a party; and what I see of party spirit satisfies me, that we have pressed our differences beyond what the good of our common country will allow.

I have communicated to you freely all I know, and all I wish on political subjects; as my situation as a public man may attach something more than usual to my remarks, you are aware of the propriety of their being confidential. I wish, however, that Richard should see this letter; and I pray God that our friendship, which has so long cemented a common sympathy of thought, may on this occasion suffer no decrease from a dissonance of opinion.

Kiss all three of the boys for me; I love every thing that belongs to you with great sincerity. . . .

Good night. "*Si vales, bene est, ego valeo.*"

Yours affectionately,

JOSEPH STORY.

P. S. If you cannot read what I have written, I pray you to employ a New England guess.

In his Autobiography, he gives a full account of his views and motives on the question of the embargo.

"There is one other act of my brief career, which I notice, only because it has furnished an occasion for a remark of Mr. Jefferson in the recent posthumous publication of his Correspondence, (4th vol. p. 148.) It was during the session of 1808-1809 that the embargo, unlimited in duration and extent, was passed, at the instance of Mr. Jefferson, as a retaliatory measure upon England. It prostrated the whole commerce of America, and produced a degree of distress



in the New England States greater than that which followed upon the War. I always thought that it was a measure of doubtful policy, but I sustained it, however, with all my little influence for the purpose of giving it a fair experiment. A year passed away, and the evils, which it inflicted upon ourselves, were daily increasing in magnitude and extent; and in the mean time, our navigation being withdrawn from the ocean, Great Britain was enjoying a triumphant monopoly of the commerce of the world. Alive to the sufferings of my fellow-citizens, and perceiving that their necessities were driving them on to the most violent resistance of the measure,—and, indeed, to a degree which threatened the very existence of the Union,—I became convinced of the necessity of abandoning it, and as soon as I arrived at Washington I held free conversations with many distinguished members of the Republican party on the subject, which were soon followed up by consultations of a more public nature. I found that as a measure of retaliation the system had not only failed, but that Mr. Jefferson from pride of opinion, as well as from that visionary course of speculation, which often misled his judgment, was resolutely bent upon maintaining it at all hazards. He professed a firm belief that Great Britain would abandon her orders in council, if we persisted in the embargo; and having no other scheme to offer in case of the failure of this, he maintained in private conversation the indispensable necessity of closing the session of Congress without any attempt to limit the duration of the system. The consequence of this would be an aggravation for another year of all the evils which then were breaking down New England. I felt that my duty to my country called on me for a strenuous effort to prevent such calamities. And I was persuaded, that if the embargo was kept on during the year, there would be an open disregard and resistance of the laws. I was unwearied, therefore, in my endeavors to impress other members of Congress with a sense of our common dangers. Mr. Jefferson has imputed mainly to



me the repeal of the embargo, in a letter to which I have already alluded, and has stigmatized me on this account with the epithet of "pseudo-republican." "Pseudo-republican" of course, I must be; as every one was in Mr. Jefferson's opinion, who dared to venture upon a doubt of his infallibility. But Mr. Jefferson has forgotten to mention the reiterated attempts made by him through a committee of his particular adherents (Mr. Giles, Mr. Wilson, Mr. C. Nicholas, and Mr. G. W. Campbell,) to detach me from my object. In the course of those consultations, I learned the whole policy of Mr. Jefferson; and was surprised as well as grieved to find, that in the face of the clearest proofs of the failure of his plan, he continued to hope against facts. Mr. Jefferson has honored me by attributing to my influence the repeal of the embargo. I freely admit that I did all I could to accomplish it, though I returned home before the act passed. The very eagerness with which the repeal was supported by a majority of the Republican party ought to have taught Mr. Jefferson that it was already considered by them as a miserable and mischievous failure. It is not a little remarkable, that many years afterwards, Mr. Jefferson took great credit to himself for yielding up, *suâ sponte*, this favorite measure, to preserve, as he intimates, New England from open rebellion.<sup>1</sup> What in me was almost a crime, became, it seems in him an extraordinary virtue. The truth is, that if the measure had not been abandoned when it was, it would have overturned the Administration itself, and the Republican party would have been driven from power by the indignation of the people, goaded on to madness by their sufferings.

"I have ever considered the embargo a measure, which went to the utmost limit of constructive power under the Constitution. It stands upon the extreme verge of the Con-

<sup>1</sup> See his letter to General Dearborn, dated July 16th, 1810, and his letter to William B. Giles, dated December 25th, 1826. Jefferson's *Correspondence*, vol. iv. pp. 148, 419.

stitution, being in its very form and terms an unlimited prohibition, or suspension of foreign commerce. If I were disposed to impute to Mr. Jefferson unworthy views, or unconstitutional objects, (which he so liberally attributes to others,) it would not be difficult to select from his life very strong proofs to justify them, after his manner. Who, for instance, can remember, without regret, his conduct in relation to the battue of New Orleans? Who can reconcile his treaty with France, by which Louisiana was adopted into the Union, with his acknowledged opinion, that it was beyond the reach of the Constitution? I speak not my own opinion on the latter point, but his. I never have entertained a doubt of the constitutionality of that treaty.

"But I pass from these ungracious topics, to which I should not have alluded, if it had not been in self-defence. You are too young to know the real facts; and when I am dead, you may feel an interest not to have your father's character sullied by the pen of Mr. Jefferson."

The letter of Mr. Jefferson alluded to here, was addressed to General Dearborn. It is dated July 16th, 1810, and is as follows:—

"The Federalists, during their short-lived ascendancy, have, nevertheless, by forcing from us the embargo, inflicted a wound on our interests, which can never be cured, and on our affections, which it will require time to cicatrize. I ascribe all this to one pseudo-Republican, Story. He came on (in place of Crowninshield, I believe,) and staid only a few days; long enough, however, to get complete hold of Bacon, who, giving in to his representations, became panic-struck and communicated his panic to his colleagues, and they to a majority of the sound members of Congress."<sup>1</sup>

<sup>1</sup> Jefferson's *Correspondence*, vol. iv. p. 148.



In the letter to Mr. Everett, my father further says, in respect to this matter, —

“The whole influence of the Administration was directly brought to bear upon Mr. Ezekiel Bacon and myself, to seduce us from what we considered a great duty to our country, and especially to New England. We were scolded, privately consulted, and argued with, by the Administration and its friends, on that occasion. I knew, at the time, that Mr. Jefferson had no ulterior measure in view, and was determined on protracting the embargo for an indefinite period, even for years. I was well satisfied, that such a course would not and could not be borne by New England, and would bring on a direct rebellion. It would be ruin to the whole country. Yet Mr. Jefferson, with his usual visionary obstinacy, was determined to maintain it; and the New England Republicans were to be made the instruments. Mr. Bacon and myself resisted, and measures were concerted by us, with the aid of Pennsylvania, to compel him to abandon his mad scheme. For this he never forgave me. The measure was not carried until I left Congress for home. The credit of it is due to the firmness and integrity of Mr. Bacon.

“One thing, however, I did learn, (and I may say it to you,) while I was a member of Congress; and that was, that New England was expected, so far as the Republicans were concerned, to do every thing, and to have nothing. They were to obey, but not to be trusted. This, in my humble judgment, was the steady policy of Mr. Jefferson at all times. We were to be kept divided, and thus used to neutralize each other. So it will always be, unless we learn wisdom for ourselves and our own interests.”

The other great measure, in which he was interested, was the increase of the Navy. Singular as it seems at the present day, to all who recollect the enthusiastic



popularity won by the Navy during the last war with England, it is nevertheless a fact, that it was previously an object of great jealousy to the Republican party. The construction of two or more frigates was the occasion of vehement denunciation against the first Federal Administration. The building of the "Constitution," and the "President," — which afterwards became the pets of the nation, so that the old timbers of the first were eagerly sought for, and shaped into canes, boxes, and other memorials of national pride and affection, — was watched with much suspicion, and thought to threaten the existence of the Republic. So violent was the opposition to this arm of the public defence, that President Adams, during the year 1801, was forced to yield in a measure to it, and actually recommended the sale of the smaller vessels in the service. This feeling had not much abated in 1809, when the embargo was in force, and war hovered round the political horizon. And when in January, 1809, my father moved a committee to inquire into the expediency of gradually increasing the Navy, the motion met with great opposition from the whole party of the Administration, and by a vigorous party rally, was immediately put down as a Federal heresy.

At that time, Mr. Jefferson and his friends were strongly opposed to the Navy, although at a later day they totally changed their opinion. My father gives an account of his views upon this question, and of the speech made by him on the occasion of the motion to increase the naval armament, in the following passage from the Autobiography: —

"One proposition, however, I ventured to move; and as it

forms a striking proof of the mutations of party opinion, I will now refer to it. Believing that we were approaching a state of things, which would probably terminate in a war with England, and that the unprotected situation of our commerce, and our want of an effective Navy, was an inducement to the continual aggressions of foreign powers, I was anxious for a gradual increase of our naval establishment. I had pondered upon the subject with a good deal of care, and had derived some aid from the experience and knowledge of those most conversant with the subject, and I was led to believe that a force of *ten* ships of the line, and of thirty frigates would, in a war of defence, be an adequate protection for our coast. I considered that Great Britain could not maintain a hostile fleet on our coast, unless at nearly triple our expense, and triple our force; that she must employ at least two squadrons, each of which, to bar accidents, ought to be superior in point of force to our whole armament; and one to relieve the other in rotation. It occurred to me, that the expense of such large fleets would be wholly disproportionate to any naval objects which Great Britain could have in view for conquest or depredations on our coast. Under these impressions, I prepared a motion, which I offered on the fourth day of January, 1809, in the following words:—

“That the committee, &c., be directed to inquire into the expediency of increasing the naval establishment of the United States, with leave to report by bill or otherwise.”

“I supported the motion in a speech of about an hour and a half in length, with all the ability and resources I possessed; and without attempting any flights of eloquence, endeavored to demonstrate the propriety of an inquiry into the subject. The proposition was virtually negatived, by an almost universal vote of the Republican party in the House to lay the same on the table, with an avowed determination to defeat it. And some of the gentlemen who spoke in opposition to it, denounced the Navy, and did not hesitate to



say that my support of it was pure Federalism, and utterly inconsistent with the known policy of the Republican party. This, I well knew, was true at Washington; but it was not true in respect to Republicanism in Massachusetts. On the seaboard in that State, we were friendly to a naval establishment. Mr. Jefferson was believed to be hostile to such an establishment; and the whole policy of the then Administration was so notoriously against it, that I incurred no small share of odium for broaching such a heretical project. I have lived to see the time when our gallant Navy, having fought itself into favor, has become the idol of the nation, and compelled many of its most strenuous opponents to avow themselves friends. Yet its early and its true friends have been forgotten, in the general eagerness to be enrolled among its advocates, at a time when there is no longer any reproach except in being lukewarm in its praise. Such is the mutability of public opinion!"

In the letter to Mr. Everett, he says on this subject, —

"The speech which I delivered on that occasion was upon the spur of the moment, (for we were hurried into debate without any time for preparation.) It is not reported, but it was thought by my friends to be far better than any I delivered in that body."

The following letters, written at this time, relate to this subject: —

TO MR. STEPHEN WHITE.

Washington, December 24th, 1808.

MY DEAR STEPHEN:

. . . The Senate has, after a most violent opposition, passed a supplemental embargo law, which will un-



doubtedly conduce much to prevent evasions. Yesterday, in the House, we passed a bill to employ two thousand seamen in the Navy, beyond those now employed. Will you believe it, that after all the clamor which the Federalists have made about the Navy, almost all of them voted against this measure? I am satisfied that they are enemies to any naval establishment now, because it strengthens the arm of Government; and I shall not be surprised at an open opposition to all their favorite doctrines in old times. I must declare, that they seem bent on the sole purpose of obstructing the Administration, whether right or wrong.

My impression is, that the Administration will pursue their present system. The embargo will be continued, and followed up by a non-intercourse. If by mid-summer this does not occasion a relaxation in the belligerents, a war will then be substituted. The Republicans here are quite up to the war tone, and by no means shrink from the difficulty. They wish to prepare for war, and yet give a little while to examine the events now occurring in Europe. Those events may have a material bearing on the measures to be pursued. But you may depend, that resistance will be opposed in every shape to the existing decrees.

I am now satisfied, from a perusal of the confidential letters, that the embargo did produce great effect in England, and that it would have occasioned an abandonment of the orders, but from the conduct of our own citizens. The resolutions in Massachusetts did us immense injury, and the subsequent petitions to repeal will do us still more. There was a time when the British Ministry seriously contemplated a change of their system, but they were stopped by the clamors of our factions. If we are but firm and resolute, probably the same effect may yet result on the meeting of Parliament. On the contrary, if New England continues to oppose and revile the Government, it will involve us in the calamities of a long and bloody war.

The stories here of rebellion in Massachusetts are continu-

ally circulating. My own impressions are that the Junta would awaken it, if they dared, but it will not do.

Yours, very affectionately,

JOSEPH STORY.

TO MR. JOSEPH WHITE, JR.

Washington, January 14th, 1809.

MY DEAR BROTHER:

. . . I think with you on the subject of the non-intercourse; it should go into effect immediately. But many persons entertain a different opinion, some of whom are of great respectability. They wish, in the event of a war, to avoid the very high price of English manufactures, which we are not yet prepared to relinquish, and to give a chance for obtaining a revenue during the first year. However, it is not a settled point when the time will commence.

President Adams has written a very long letter to General Varnum on our national affairs. He speaks with great approbation of the Administration, and goes the whole length with them in vindication of our national rights. I assure you, that I read his letter with the greatest delight, and regretted that for a moment I had ever doubted his patriotism. The letter would do honor to any man living. He, Mr. Gray, and Mr. John Quincy Adams, have deserved highly of their country; and I venture to predict, that when party spirit has passed away, their memories will be revered by every honest and honorable American, with the greatest enthusiasm.

We are yet engaged on the bill to fit out the whole Navy; it will probably succeed. We have passed to a third reading by a great majority to-day, a bill granting \$200,000 for distressed seamen. So you may perceive that our Southern friends are no enemies to commerce. On the question respecting the Navy, a majority (twelve) of the Virginia delegation voted in favor of *the whole*, and all the delegation will



vote to employ one *half*. So much for the Virginia desire to destroy commerce. . . .

Your affectionate brother,

JOSEPH STORY.

TO MR. JOSEPH WHITE, JR.

Washington, January 17th, 1809.

DEAR BROTHER:

I have seen a letter from Mr. Canning, published in the Centinel, and doubtless by the connivance of the British Minister. This is a most infamous attempt to appeal from the Government to the people. This is the old game of Genet played over again, and the insidious publication, contrary to all diplomatic propriety, is an irrefragable proof of British influence and intrigue. The President has this day presented a message, with the letter of Mr. Canning, and Mr. Pinkney's reply to it. This reply is very excellent, and fully refutes the one-sided statements of Mr. Canning. It was not received until very lately by the Government. From a perusal of it, (and five thousand copies will be published,) you will more and more be satisfied of the perfect purity and correctness of the Administration, and of the evasive, disingenuous conduct of Great Britain. In the name of all that is good, are we to be forever the dupe of a nation, which has no other object than to rob us of our rights and then destroy our confidence in our own Government?

In fact, Mr. Canning's letter is totally false in its leading principles, and contradicts his official letter formerly published. If you will examine the letter of Mr. Pinkney, published in the documents at the opening of Congress, you will perceive that Mr. Pinkney did make the most formal and unequivocal offer to Great Britain to repeal the embargo, on Great Britain's rescinding her orders; and this offer was made in writing, long after the conversation which was detailed by Mr. Canning. But the present letter of Mr. Pinkney will satisfy every honest man. As to the British partisans in this coun-



try, it is in vain to stifle their falsehoods or hardihood of hatred.

Yesterday we debated the Navy bill. I supported it with all my power, and spoke at considerable length; but we failed, and only one half of the Navy will be equipped. However, the Senate are decidedly in favor of the whole, and if they remain true to their determination we shall succeed.

The House are now debating on the number of copies of the President's message which ought to be published. The Federalists, as usual, are for embarrassment, but they are wonderfully surprised by the unexpected letter of Mr. Pinkney. Yet they affect not to be convinced, and shrug their shoulders.

Your affectionate brother,

JOSEPH STORY.

My father remained in Congress during only one session, (that of 1808-09,) and declined becoming a candidate for reëlection. Having been originally chosen without opposition, there was no reason to doubt, that, had he been inclined to serve a second time, he could easily have been elected. But disgust at the chicanery and meanness of parties, together with professional and domestic considerations, induced him to decline the position. In his Autobiography, he says, —

“I had been long satisfied that a continuance in public life was incompatible with complete success at the bar; and the few, though brilliant exceptions, which I have since known to the truth of the remark, and the many confirmations of it, have made me resolute at all times in my advice to ambitious young lawyers never to seek public life, if they meant to be eminent at the Bar. Besides, I cannot disguise that I had lost my relish for political controversy, and I found an entire obedience to party projects required such constant

sacrifices of opinion and feeling, that my solicitude was greatly increased to withdraw from the field, that I might devote myself with singleness of heart to the study of the law, which was at all times the object of my admiration and almost exclusive devotion."

In 1810, my father went to Washington, to argue the case of the Georgia Claim. During his absence, the following letters were written:—

TO MRS. SARAH W. STORY.

Washington, February 7th, 1810.

This evening, my dear wife, has been devoted to an unusual employment. Mrs. Madison holds a levee every Wednesday evening, and I have just returned from my attendance at her court.

I could describe to you many of the particular personages if I thought it were worth your notice; but very few engaged my attention, although we were told that the rooms were uncommonly brilliant. The individual, who most attracted my notice, was the widow of the late General Hamilton. She is now at Washington, soliciting from Congress the payment of sums due for the services of her husband in the army, and which he generously relinquished to the government, soon after he came into office under Washington's administration. I am told that she is not now affluent, and she wishes to secure something for herself and children. Sorrow with me is always respectable; but when I beheld in her a woman borne down by the heaviest of calamities, the loss of an affectionate husband, and that husband one of the greatest men of the age in which he lived, my sympathy was extremely excited. You remember that Hamilton fell in a duel with Col. Burr. I am told that since that day she has been immovably fixed in despondency; she now looks old, and like a being that has bled under the keen-



est anguish. Her countenance has the softness of settled sorrow, and the smile of the moment scarcely illuminates the serenity of its gloom. Altogether, her face is very interesting, and it is evident that it once was, if not beautiful, at least more than handsome. I know not how it was, but when I had singled her from the group, I fastened my eyes upon her with great attention. I could scarcely refrain from a constant gaze, and sought an introduction, which I obtained and she returned with the readiness and the manners of an accomplished lady. My mind has involuntarily hurried to the past. She was once the favorite of the idol of the nation. That husband, who now lies in the dust, was the model of eloquence and the most fascinating of orators. With all his failings, he possessed a high and ennobled spirit, and acquired an influence from his overwhelming talents which death alone swept away. These reflections held me entranced for a considerable time amid the gayety and bustle of the hurrying crowd, and colored with a melancholy hue many a wandering thought.

. . . Amid such a group, you may readily imagine that some odd and singular figures appeared. Were I disposed to satirize, I might paint to you some aged damsels, flirting in the gay undress of eighteen; and antiquated country squires assuming the airs of fashionable beaux. Mr. Madison seemed very little fitted for the scene. His grave and sober character and retired life lead him far from the pleasantries of a coterie. I heard some fine execution on the piano, but it was mere execution. To my slow and unlearned ear much of it was very dull and very fantastical. . . .

Your affectionate friend,

JOSEPH STORY.

TO MRS. SARAH W. STORY.

Washington, February 17th, 1810.

MY DEAR WIFE:

. . . On Thursday, I argued before the Supreme Court, the great cause of the Georgia Claim, and yesterday



I was employed before the Committee of Claims on the same subject. I do assure you, that the labors of my mind in these speeches have conduced to the dissipation of an *ennui*, which for a week has overclouded my faculties. I should rejoice to have continual employment here, but I am literally enchained in the Castle of Indolence. I rise at eight for breakfast; pass the interval until eleven, in roving from room to room; then go to the Capitol, and hear the arguments of lawyers, and the speeches of members of Congress until four o'clock; return to my house; eat my dinner; muse from that time till eight in the evening; drink my tea; and retire about ten o'clock to my bed. Every day presents the same tedious round, the same listless uniformity. Of all dull places, Washington is to me the dullest. . . .

I am hurried away to attend some experiments to be made by Mr. Fulton on the Torpedo. Good-by, may Heaven bless and preserve you for the solace of your affectionate husband.

JOSEPH STORY.

On his return to Massachusetts, he did not entirely withdraw himself from the political field, but was re-elected a member of the House of Representatives for the State, and served in that capacity until January 12th, 1812. On May 17th, 1810, he thus writes to Mr. Williams:—

TO NATHANIEL WILLIAMS, ESQ.

Salem, May 17th, 1810.

MY DEAR FRIEND:

Let not my late silence alarm you. It has been occasioned solely by the pressure of courts, which have continually engaged me ever since I returned home. I am now, thank God, relieved from their immediate influence, by the adjournment of the Supreme Court *sine die*. But as a counterpart, political labors gather round me. The votes of my town have

again selected me for a representative in the Massachusetts Legislature. I obey their voice with cheerfulness, although very inconvenient to me. In the glorious struggle of the Republicans, I have not been an indifferent spectator, and I have now a right to rejoice in the honorable triumph they have achieved against intrigue, influence, and wealth. Thanks to the intelligence and integrity of the yeomanry of my native State, we are safe in the enjoyment of all our rights. The Governor, Lieutenant-Governor, and House are Republican, — the latter by about forty majority. The Senate will be equally divided, — twenty on each side. We shall elect a senator in the place of Mr. Pickering, or at least, (if the Senate do not concur,) we shall save our State from being misrepresented. Let us enjoy the present moment, and with sincere congratulation, “pursue the triumph and partake the gale.” . . .

My “Abbott on Shipping,” is nearly through the press, and I shall send you a copy by the first opportunity. . .

Yours, very affectionately,

JOSEPH STORY.

In January, 1811, he was elected Speaker of the House of Representatives, in the stead of Hon. Perez Morton, who was appointed Attorney-General of the State. On taking the chair, January 23d, 1811, he made the following address :—

“GENTLEMEN OF THE HOUSE OF REPRESENTATIVES:

“The honor which you have allowed me, by your suffrages, of presiding at your deliberations, claims my grateful acknowledgments. Yet, the deep responsibility of the office, and an unaffected sense of my own inexperience in its duties, fill me with unusual diffidence and anxiety. In ordinary times the faithful discharge of these duties is attended with no inconsiderable embarrassment and difficulty; but in times



of political division like the present, the task becomes doubly arduous, while the hope of executing it with public approbation is materially diminished. I repair, however, without hesitation, to the post which you have been pleased to assign me, with the perfect confidence that the House will be indulgent to unintentional errors, and will cheerfully aid in the support of their own wise and salutary regulations.

"The discretion confided to your speaker is necessarily extensive, and may sometimes in its exercise be a source of jealousy or misapprehension. It is therefore always desirable, where it is practicable, to limit it by settled principles. With this view I shall, with your good pleasure, in all cases where your rules are silent, govern myself invariably by those parliamentary usages which, on account of their wisdom and propriety, have received the sanction of ages. Thus, gentlemen, you will have in your own hands a text by which to correct my errors and to test those decisions, the principles of which may not immediately suggest themselves to the candid mind."

On the organization of the new House in the succeeding May, he was reëlected to the same station. His quickness and tact enabled him to manage this turbulent and heterogeneous body with great success; and he presided over their discussions to the satisfaction of all the members. Mr. Ezekiel Bacon, who was then in the House, and who shared with him the hostility of Mr. Jefferson, for the part he acted in bringing about the repeal of the embargo, says, —

"He was a most efficient and business-despatching presiding officer, and with such tact and rapidity did he manage the business of that crowded and sometimes stormy house, that it seemed often to be left with him to do with it pretty much as he pleased; and the question in controversy was



often got through with, and was satisfactorily disposed of, before a large portion of the greener members knew exactly what it was, or in what stage of consideration it stood. This feature in his administration of the duties of that chair, I well recollect; and often wondered that it was submitted to so acquiescingly by the House; although it was doubtless the only practicable mode of bringing out any thing like harmonious melody from a discordant harp of more than five hundred strings."

In 1810, the seat of Associate Justice of the Supreme Court of the United States became vacant by the death of Mr. Justice Cushing, who had occupied it from the first organization of the Government. This post was first offered by President Madison to Hon. Levi Lincoln, by whom it was declined, then to Hon. John Quincy Adams, at that time in Russia, by whom also it was declined. Thereupon, my father to his great surprise, and altogether without solicitation on his part, received the appointment on the 18th November, 1811. The annual salary was then only three thousand five hundred dollars, and as his professional income was from five to six thousand dollars a year, and continually increasing, the acceptance of the office was no slight pecuniary sacrifice. The reasons which prompted him to accept it, he states in the following letter: —

TO NATHANIEL WILLIAMS, ESQ.

Salem, November 30th, 1811.

MY DEAR FRIEND:

In prosperity, as in adversity, I know no attentions so interesting as those of our friends; they revive all our fondest associations, and mingling in the cup of pleasure or of sorrow, add a maturity and mildness to its taste, which make it more

delicate in its flavor. But without any more of figurative language, let me tell you in the plainness of my heart, how gratefully I received your late letter, in which you congratulate me on my recent appointment. It gave me a new relish for the office, and made me feel how truly desirable was a situation which, combining duty with pleasure, would lead me directly through Baltimore.

Notwithstanding the emoluments of my present business exceed the salary, I have determined to accept the office. The high honor attached to it, the permanence of the tenure, the respectability, if I may so say, of the salary, and the opportunity it will allow me to pursue, what of all things I admire, juridical studies, have combined to urge me to this result. It is also no unpleasant thing to be able to look out upon the political world without being engaged in it, or, as Cowper says, —

" 'Tis pleasant from the loop-holes of retreat  
To gaze upon the world."

The opportunity also of visiting you yearly, and of meeting with the great men of the nation, will be, I am persuaded, of great benefit to my social feelings, as well as intellectual improvement. So that hereafter I hope to have you a counsellor before me, not *obiter*, but *seriatim et arguendo*. . . .

Whether I shall be at Washington this winter or not, depends on circumstances. The Legislature of Massachusetts will sit in the winter. The House, of which I am Speaker, is nearly balanced; great political questions are to be decided, and if I resign, probably there will be some difficulty about a choice; however, I shall act as my friends require.

Yours affectionately,

JOSEPH STORY.

In consequence of this appointment, he was compelled to resign his seat in the Legislature of Massachusetts. Upon giving notice to that effect, a resolution was moved

(January 17th, 1812,) by his competitor, Hon. Timothy Bigelow, of Medford, that "the thanks of the House be presented to the Hon. Joseph Story, for his able, faithful, and impartial discharge of the duties of the chair." This resolution was unanimously adopted by a very full House, a tribute of no small value in those days of high party excitement. My father replied as follows : —

"GENTLEMEN OF THE HOUSE OF REPRESENTATIVES :

"The flattering commendations recorded in your recent vote, claim in return, the most sincere expressions of my gratitude. To the good opinion of my fellow-citizens I could never pretend an indifference ; and I am free to confess that the approbation of the representatives of an enlightened people could not have been conveyed in a manner better calculated to excite my highest sensibility.

"The time has now arrived when it becomes necessary for me to ask your indulgence to retire from the chair, which your suffrages heretofore assigned me. On this occasion, which is probably the last on which I shall ever have the privilege to address you, I feel an unusual interest mingled with inexpressible melancholy. I have to bid farewell to many distinguished friendships which have been the pride and pleasure of my life. With many of you I have for a series of years shared the labors and the duties of legislation, sometimes with success and sometimes with defeat. With all of you I have rejoiced to coöperate in support of the character and principles of our native State — a State which was the cradle, and, I trust in God, will be the perpetual abode of liberty.

"May I be permitted to add, that during the period in which I have had the honor to preside at your deliberations, the manly confidence, the elevated candor, and the invariable decorum of the House, have smoothed a seat, which, though adorned with flowers and honors, is to the ingenuous mind



the thorny pinnacle of anxiety and toil. Cheered indeed by your kindness, I have been able, in controversies, marked with peculiar political zeal, to appreciate the excellence of those established rules which invite liberal discussions, but define the boundary of right, and check the intemperance of debate. I have learned, that the rigid enforcement of these rules, while it enables the majority to mature their measures with wisdom and dignity, is the only barrier of the rights of the minority against the encroachments of power and ambition. If any thing can restrain the impetuosity of triumph, or the vehemence of opposition — if any thing can awaken the glow of oratory, and the spirit of virtue — if any thing can preserve the courtesy of generous minds amidst the rivalries and jealousies of contending parties, it will be found in the protection with which these rules encircle and shield every member of the legislative body. Permit me, therefore, with the sincerity of a parting friend, earnestly to recommend to your attention a steady adherence to these venerable usages.

“Called as I now am to act in other scenes, I cannot but feel the deepest humility in weighing my own deficiencies and the new responsibility imposed upon me; at the same time, I cannot but recollect, that I leave my legislative associates amidst perils, which may truly be said to try men’s souls. I am not unconscious of the difficulties which surround the public councils; nor of the gloom and the silence which presage approaching storms. Many of the revolutionary worthies of our native state, to whom we might look for support, are gathered to their fathers. I might mention the names of Bowdoin, Hancock, Adams, and Sumner, and embrace no very distant period. Within my own short political life, the tomb has closed over the generous Knox, the intrepid Lincoln, the learned Dana, and the accomplished Sullivan. But the fame of their achievements has not passed away; the laurels yet freshen and repose on their sepulchres, and the memory of their deeds shall animate their children boldly to dare, and gloriously to contend for their injured country. I

persuade myself that the flame kindled in the Revolution will burn with inextinguishable splendor; that when the voice of the nation shall call to arms, this Hall will witness a heroic firmness, an eloquent patriotism, and a devotion to the public weal, which have not been exceeded in the annals of our country."

In the mean time, although engaged in political life he did not forget that literary debt, which every lawyer is said by Coke and Bacon to owe to his profession. In the midst of politics and business, he found time during the year 1809, to edit a new edition of Chitty on Bills of Exchange and Promissory Notes, appending to it a large body of valuable annotations. In 1810, he prepared an edition of Abbott on Shipping, with copious notes and references to American decisions and statutes. In 1811, he edited a new edition of Lawes on Assumpsit, adding many notes. These books were well received by the profession, and evince the patience of research and accuracy of learning which belonged to whatever he did.

The following letter from J. W. Treadwell, Esq., of Salem, will show that his labors were not confined to his profession, and is also interesting as showing his scrupulousness of morals.

Salem, August 25th, 1847.

MY DEAR SIR:

. . . My first acquaintance with your father commenced in early life, when he was first established in the practice of his profession in Salem. For the first few years, I only knew him as an eminent lawyer, distinguished for his ability in his profession, and prominent in politics as a member of the old Republican party. At that period the spirit of party politics was, as you are aware, carried to an extreme



which interrupted, in a good degree, the social intercourse even of families. The interruption of our commerce by restrictions at home and abroad, antecedent to the year 1812, had induced me to retire from the business in which I had been engaged, as factor in the East India trade. Your father, while a member of the Legislature of Massachusetts, exerted his influence to obtain acts of incorporation for the State Bank in Boston, and the Merchants Bank in Salem, the capital stock of which was almost exclusively owned by members of the political party then prominent.

About this period, private clubs of gentlemen of the same political party were not uncommon, and I became a member of one of those, consisting of twelve gentlemen, of which your father was one. We met weekly, on Friday evenings, at each other's houses, alternately. The object of the club was not exclusively political, but free and frank intercourse upon all subjects was indulged in; a kind and social spirit pervaded it, and it was made a means of mutual instruction and improvement. I almost now seem to have a recurrence of the feelings I then enjoyed, and to hear the animating tones of your father's voice, and the joyous shout of the company, at some of his peculiar and striking remarks! This club continued to meet weekly for over twenty years.

At the organization of the Merchants Bank, your father was elected to the Board of Directors, and I was invited to go into the bank as one of its officers. As Cashier of the institution, to which I was subsequently elected, I was brought into close intimacy with him; and yet a closer one, upon his election to the Presidency of the bank, in a couple of years afterwards. I owe much to him of whatever is valuable in my business habits. To your father was committed the duty of drafting the by-laws of the bank, and establishing rules for the conduct of its business. He was determined that it should be honorable and above-board in all respects. A habit had always heretofore existed in our banks, of demand-



ing payment of business paper discounted, if a renewal was asked, three days before maturity of the paper, that is, the three days of grace were so much gained by the bank. This he said was decidedly usurious, and no such custom should be countenanced. A change of the custom in all the banks in the town was the consequence.

He consulted me on his receiving a letter from Washington intimating that President Madison was about to nominate him an Associate Justice on the Bench of the Supreme Court of the United States. The letter, I think, was from Mr. Bacon. He stated that he was in the receipt of a large income from his professional business, and that the pecuniary sacrifice was such, that his first impression was unfavorable to the acceptance of the office. After this period, having taken his seat upon the Bench, his attention became necessarily diverted from the affairs of the bank, but the stockholders annually reëlected him, and he occupied the office until August 22d, 1835, several years after his removal from Salem to Cambridge. His attention, however, was only requested to the most important of its affairs, and his legal opinions sometimes asked. . . .

What I have said in relation to the former custom of our banks, in appropriating to themselves the days of grace on commercial paper, was only one, out of many deviations from strict honesty, which he condemned. Any thing like circumvention, or a covert mode of adding to the gains of the bank, in any shape, was sure to meet his prompt and decided negative. The right and the wrong, he said, were clearly defined in all human affairs, and no sophistry could obscure, no art unsettle them. A few years after the Merchants Bank had been in successful operation, under his administration, one of the old Salem banks was ruined by the unfaithfulness of its officers. This event alarmed him, and he appealed to it with great force, while inculcating his stern principles of probity and uprightness at the Directors' Board. I shall never forget the ardor of his manner, in his

appeal to it, as a cause of watchfulness over each other, among all officers of special trust and responsibility.

About this period, I had received from a friend then travelling in Europe, a printed account of the organization of the first Savings Bank established in London. I had before been made familiar with the principles and objects of Savings Banks, by some notices in the *Edinburgh Review*, which had also attracted the attention of your father. We both became deeply interested in the subject, and thought that a Savings Bank must be at once established in Salem. This was done. He was one of the first Board of Trustees, and continued so until his removal to Cambridge. He foresaw the advantages which must follow its establishment, and predicted, at our first consultation upon the subject, that a new era was about to open for the benefit of the industrious poor; and no prophecy was ever more truly fulfilled. It has been my privilege to be one of the managing officers of the bank from that day to this. Its funds have swelled to a sum now exceeding one million of dollars, owned by over five thousand depositors; and what is most remarkable, in the nearly thirty years of its existence, it has never lost a dollar by bad debts or investments.

Not only in this, but in all our public improvements, your father took an active and prominent part. Was a new alms-house, or school-house to be erected, he was one of the building committee. To him we owe more than to any one else the existing excellent condition of the streets of our city. Our side-walks were formerly paved with shapeless and uneven stones; at his suggestion and by his exertions in town meeting, dressed curb-stones were furnished at the public expense, to all land-owners, who would pave the side-walks before their premises with brick. The effect of this proposition has been, to beautify our public streets to a degree not surpassed, perhaps, in any city of the Union. He was deeply interested in improving the means of education, and served, with his accustomed fidelity and zeal, for many



years, on our school committees. But I am only recounting what all are familiar with, and will only add, that if you can find, in any thing I have stated, what may be useful to you in your work, I shall be gratified.

With my kindest regards to your mother and friends, believe me, very truly, yours, &c.

JOHN W. TREADWELL.

WM. W. STORY, ESQ.

His domestic happiness was crowned by the birth of his daughter Caroline, and subsequently of his son Joseph. The following letter to Mr. Williams gives us a glimpse into the household.

TO NATHANIEL WILLIAMS, ESQ.

Boston, February 20th, 1811.

MY DEAR FRIEND:

I rejoice in the acknowledgment of your recent letter, though I have been a little more charitable than usual in accounting for your silence. The necessary engagements of the profession, the accumulation of domestic cares, and the delightful task of sporting with your boy, were all considered as no mean apology for a half-year's epistolary negligence.

My wife and myself take great interest in the picture which you have given us of your family group, and learn with peculiar satisfaction that our young friend is lively, elegant, and sensible. By the by, I do not well discern how he could have been otherwise. Can a good tree bring forth bad fruit? In return we assure you, that our dear little Caroline is very healthy, and very handsome; as fine a specimen of New England red and white, as ever graced the visions of a Northern poet. She is a source of perpetual interest and anxiety, and amply, very amply repays our endearments, by becoming every day more affectionate and playful.



I have just published Lawes on Assumpsit with notes, and I have preserved a copy for you, which I shall transmit by the first convenient opportunity.

Yours affectionately,

JOSEPH STORY.

But these golden days were not destined to last. On the 28th of February, 1811, Caroline died, and a cloud of sorrow darkened over the house. My father was almost inconsolable; but he devoted himself to study and labor as the best alleviation of his sorrow, and sought, by creating other interests, to forget his loss. His son Joseph still was left, for whom, with all a father's pride, he laid out future visionary plans of joy and fame — never, alas, to be realized.

The following verses he wrote on the death of Caroline: —

Sweet, patient sufferer, gone at last  
To a far happier shore,  
All thy sick hours of pain are past,  
Thy earthly anguish o'er.

And yet, if aught or fair or bright  
Might hope to linger here,  
Long, long had shone thy modest light,  
And never caused a tear.

In temper how serene and meek !  
How touching every grace !  
The smile that played upon thy cheek  
Might warm an angel's face.

A heart, how full of filial love !  
How delicate, how good !  
Thy feelings served intent to prove  
The bliss of gratitude.

So quiet and so sweet thy death,  
It seemed a holy sleep, —  
Scarce heard, scarce felt, thy parting breath,  
Then silence fixed and deep.

Who can the utter wretchedness  
Of such a scene portray,  
When the last look, the last caress  
Is felt, and dies away ?

I kissed thy faded lips and cheek,  
And bent my knees in prayer ;  
Bent — but there was no voice to speak,  
It choked in still despair.

Ah ! never, never, from my heart  
Thine image, child, shall flee —  
'T is soothing from the world to part,  
'T is bliss to think on thee.

## CHAPTER VII.

### JUDICIAL LIFE.

TAKES HIS SEAT AS JUDGE—PARTY VIEWS AS TO HIS APPOINTMENT—HIS OWN FEELINGS—HIS JUDGMENTS DURING THE FIRST SESSION—CONDITION OF THE CIRCUIT COURT DOCKET—EFFECT OF HIS JUDGMENT IN UNITED STATES *v.* WILSON—DUTIES OF A JUDGE OF THE SUPREME COURT—JURISDICTION OF THE UNITED STATES COURTS—CHARACTER OF THE NEW ENGLAND STATES—EFFECT OF THE EMBARGO, NON-INTERCOURSE, AND WAR—THE CASES FIRST TRIED BY HIM—REVIEW OF THE CONDITION OF THE ADMIRALTY AND PRIZE LAW—DIFFICULTY OF OBTAINING BOOKS UPON IT—HIS ADMINISTRATION OF IT—CONDITION OF EQUITY—REMARKS ON CHANCELLOR KENT—HIS AND CHANCELLOR KENT'S JUDGMENTS IN EQUITY—CONDITION OF THE PATENT LAWS—YANKEE CHARACTER—HIS FIRST PATENT CAUSES.

WHEN, in 1811, my father was appointed to a seat on the Bench of the Supreme Court of the United States, he was only thirty-two years of age. He was not only the youngest Judge on that bench, but with the exception of Mr. Justice Buller, who at the same age was elevated to a seat on the King's Bench in the mother country, at the side of Lord Mansfield, and who is conceded to have been one of the brightest luminaries by which it was ever adorned, I am not aware of any instance in which so young a man was ever called to the highest judicial station of his country either in England or America. The ability and learning displayed by him at the Bar, as well as the spotless character with which he had passed



through the fiery ordeal of politics, had won for him the respect and confidence of a large class. But there were not wanting those who looked upon his elevation with an inauspicious eye. Party animosities were then very bitter, and among his political opponents his appointment was ridiculed and condemned. Bigoted in their prejudices, some honestly thought that none but a fool or a knave could entertain Republican opinions; and others, from his youth and active political course, augured a multitude of evil consequences. The commencement of his judicial career was jealously and anxiously scrutinized. But the fears of the doubters, and the false prophecies of enemies, were soon dissipated by his conduct on the Bench. From the moment he assumed the ermine of the Judge, he shook from his feet the dust of the political arena. It was, of course, impossible for a nature so constituted as his, not to retain a lively interest in the public acts and policy of his country, but upon taking his new position he at once withdrew from all active participation in them, and became a calm observer of the battle field on which he had before so earnestly fought. From the serene heights of Jurisprudence he looked down upon the broil of political contest unmoved, and suffered no party partialities to warp his legal judgment.

This unexpected honor seems, at first, rather to have depressed him with its weight of responsibility. He, more than others, felt his deficiencies, because his standard was so high. With a modest determination to deserve the confidence thus reposed in him, and to devote his powers to the culture of jurisprudence, yet with much diffidence, and many doubts as to his ability, he entered upon the duties of his office. But a short trial convinced

him that his difficulties were visionary, and that he was quite equal to his position.

The Bench at this time was composed of seven judges. John Marshall was the Chief Justice. The Associate Justices were Bushrod Washington, William Johnson, Brockholst Livingston, Thomas Todd, Gabriel Duval, Joseph Story. William Pinkney, was the Attorney-General. With all these gentlemen my father soon found himself on terms of familiar and agreeable intercourse.

During the first session he delivered the judgment of the Court in only two cases,—*Marsteller v. McClean*, (7 Cranch's R. 156) which was a case upon a question of pleading; and *United States v. Jonah Crosby*, (7 Cranch's R. 115) by which it was decided, that the title to land can be acquired and lost only in the manner prescribed by the law of the place where it is situated. This was his maiden opinion, to which he alludes in one of the following letters. The admiration for Mr. Pinkney, expressed in them, continued, after ampler experience, to the last.

TO NATHANIEL WILLIAMS, ESQ.

Washington, February 16th, 1812.

MY DEAR FRIEND:

Before this day, which is truly a day of rest, I have had no opportunity to reply to your late favor. We have been engaged in Court, constantly, from eleven to four o'clock, and have listened to some very good, and many very dull arguments. You ask me how the ermine rests upon my shoulders. I answer with more ease than I expected. I am more at home than I looked to be in so novel an employment. The causes which I have had to encounter have been generally difficult, and the first, (the Holland Company cause,

which lasted five days, was extremely intricate and laborious. It was on the Equity side of the Court, with which I profess no familiarity, but steady attention enabled me to grasp it, and my first strong views have been those which the Court have ultimately supported. We live very harmoniously and familiarly. We moot questions as they are argued, with freedom, and derive no inconsiderable advantage from the pleasant and animated interchange of legal acumen.

I had no opportunity of hearing Mr. Pinkney until Friday; though engaged in another cause, he shunned a display, and after keeping the public in suspense as to his *début*, he at last burst upon us. It was in a Maryland cause, — *Le Roy v. The Maryland Insurance Company*. Winder and Harper were for the plaintiffs, Martin and Pinkney for the defendants. Winder was smart and striking; Harper adroit and able; Martin heavy, unmethodical, and inaccurate. A crowded audience attended to hear Pinkney, and he was evidently put upon his mettle. Though I live in the same house, I had seen little of him; he seemed distant, reserved, and haughty. When he conversed, I was so unfortunate as to find him sluggish, probably because his mind was preoccupied. His countenance and voice, too, were not prepossessing. You may judge, therefore, that I saw him come to the argument with some doubts whether your own eulogy were true. His manner was very vehement and impetuous, his action quick, his gestures strong, and his whole body in continual motion. His voice, naturally harsh, was pressed into occasional elevation and immediate depression, in a manner that was rather painful. These were his defects, and all his defects. His argument was admirable, his language fluent and select, elegant, glowing, fiery, — the *ardentia verba* of oratory, — and his logic was conceived with a cogency that bore itself in one continual stream of reasoning.

“Wave followed wave, nor spent its force in vain.”

I say this to you without meaning to intimate that he had



the better of the argument. It is of no consequence. His manner of treating his side of the question exhibited the character of a master, and that is all that oratory demands. I consider him a strong man, and a prodigious gain in the Administration.

I hardly know what to say to you on the subject of war. There are many men of talents, of great talents in Congress, on the war side, and I am still satisfied that the question will at some time in the session be brought to a severe examination. The honor and spirit of the nation will not be yielded without a determined struggle, yet I doubt whether war will ensue. The taxes and imposts to be annexed to a war-system, will weigh heavily on the country as well as the elections of the members of Congress. To-morrow, Mr. Bacon will open his budget, and a torrent of new impositions will, as he assures me, issue from it. Georgia, South Carolina, Tennessee, Ohio, and Kentucky, will be all for war; every other State in the Union will divide. . . .

Yours, affectionately,

JOSEPH STORY.

TO SAMUEL P. P. FAY, ESQ.

Washington, February 24th, 1812.

MY DEAR FRIEND,

. . . So far as my judicial duties go, I find myself considerably more at ease than I expected. My brethren are very interesting men, with whom I live in the most frank and unaffected intimacy. Indeed, we are all united as one, with a mutual esteem which makes even the labors of Jurisprudence light. The mode of arguing causes in the Supreme Court is excessively prolix and tedious; but generally the subject is exhausted, and it is not very difficult to perceive at the close of the cause, in many cases, where the press of the argument and of the law lies. We moot every question as we proceed, and my familiar conferences at our lodgings often come to a very quick, and, I trust, a very accurate opi-

nion, in a few hours. On the whole, therefore, I begin to feel the weight of depression with which I came here insensibly wearing away, and a calm but ambitious self-possession gradually succeeding in its place. Some difficulties which I anticipated have vanished at the touch, and some which I have had to meet have been vanquished without extraordinary labor. I am, therefore, comparatively happy, and begin to feel encouragement, that by diligence, care, and patience, I may not dishonor the elevated station assigned to me. It fell to my lot to-day to prepare and deliver the opinion of the Court in a Massachusetts cause, so that I have already delivered my maiden speech.

Many of our causes are of extreme intricacy. Long chancery bills, with overloaded documents, and long common law records, with a score of bills of exceptions attached to them, crowd our docket. One great cause of the Holland Land Company, of which I had a printed brief of two hundred and thirty pages, lasted five days in argument, and has now been happily decided. It was my first cause, and though excessively complex, I had the pleasure to find that my own views were those which ultimately obtained the sanction of the whole Court.

I have heard Mr. Pinkney, our late Minister and present Attorney-General, several times. His first appearance is not prepossessing. He has the air of a man of fashion, of *haut-teur*, of superiority, and something, I hardly know what to call it, of abrupt and crusty precision. On acquaintance, this wears away, and you find him a very pleasant, interesting gentleman, full of anecdote and general remark. In public speaking, he is excessively vehement and impetuous; his voice is harsh and feeble, discordant and irregular; it breaks as from a precipice, loud and abrupt, to a very low and obscure tone, and throughout is unmusical. His gesticulations are too full of ardor and rapid motion; he addresses a court as he would a jury. These are his faults; but he atones, yea greatly atones for them all, and triumphs over

every obstacle. His language is most elegant, correct, select, and impressive; his delivery fluent and continuous; his precision the most exact and forcible that you can imagine. He seizes his subject with the comprehension and vigor of a giant, and he breaks forth with a lustre and a strength that keep the attention forever on the stretch. I confess that he appears to me a man of consummate talents, a man whom I would rank with Dexter and Otis, though extremely different as to the eloquence and the tone of his genius. If he lives, he will probably be one of the leading men in the future Administrations of our country.

I have little time and less inclination to devote to politics; you know at Boston quite as well as at Washington what is passing here. I do not choose, since I am no longer a political man, to be too inquisitive, and content myself with what comes in my way, on the questions which are debated in and out of Congress.

Yours, affectionately,

JOSEPH STORY.

TO MRS. SARAH W. STORY.

Washington, March 5th, 1812.

MY DEAREST WIFE:

. . . It is certainly true, that the Judges here live with perfect harmony, and as agreeably as absence from friends and from families could make our residence. Our intercourse is perfectly familiar and unconstrained, and our social hours when undisturbed with the labors of law, are passed in gay and frank conversation, which at once enlivens and instructs. Abroad, our rank claims and obtains the public respect; and scarcely a day passes in Court, in which parties of ladies do not occasionally come in and hear for a while the arguments of learned counsel. On two occasions our room has been crowded with ladies, to hear Mr. Pinkney, the present Attorney-General. He is a very able and



eloquent man; his voice is harsh and feeble; his manner very vehement, nay, almost boisterous; yet, notwithstanding these defects, such is his strong and cogent logic, his elegant and perspicuous language, his flowing graces, and rhetorical touches, his pointed and persevering arguments, that he enchants, interests, and almost irresistibly leads away the understanding. . . .

Your affectionate husband,

JOSEPH STORY.

TO MRS. SARAH W. STORY.

Washington, March 12th, 1812.

MY DEAREST WIFE:

As the time approaches at which I am to direct my steps towards my own interesting home, my heart feels an unusual restlessness and anxiety. I can hardly preserve a fixed attention to ordinary business, and feel my mind insensibly absorbed in picturing the familiar scenes of my own fireside. We shall probably adjourn by Saturday, or at farthest by the middle of next week. I cannot disguise my own impatience at every little occurrence which threatens a protraction of our residence here. If, indeed, you had been accustomed to leave, like me, a dear home, to pass among strangers many an idle, many a melancholy hour, to turn your reflections to other scenes, and count the wearying distance between yourself and them, you would not wonder that I dwell so frequently on the subject, and so reluctantly quit it. . . .

Let me recollect;—our dear little boy is now almost nine months old, and must, unless a very odd fellow, begin to have teeth, and to walk. Suppose, for my own amusement, I were at this moment to picture him in your arms, dancing to my old favorite tune, or hallooing “dad, dad, dad.” It is about breakfast time, and as the morning is lowering, you have slept a little later than usual. Hester is on the other side of the breakfast table, not much disposed to talk, but recollecting some dream of the shadow of a beau, and perhaps

teasing you with the intimation that you will not have any letter from me this week. As to Mr. Horace, I do not know whether he is devoutly bent on a scrutiny of the virtues of toast and coffee, or debating in his own mind which is most profitable, the law of love or the love of law; perhaps he may find it more convenient during the day to solve the problem, in the company of Miss ——. As to Mr. Washington, I do not well know what to do with him; whether he is at Salem, or Woburn, or Marblehead, I know not, for I have neither heard nor seen any thing respecting his movements since I left home. If he were at home, I should have no doubt that, by way of employment in a genteel manner, he was kicking his feet against the legs of the breakfast table.

But adieu to these trifles, which, though they amuse me in a dull and rainy morning, sitting by my fire, and waiting with an anxious appetite for the breakfast bell, can hardly bear repetition at the distance of five hundred miles.

It will probably take me twelve days to reach home after I set out on the journey. I fear the roads in New England are now very bad, and I shall rest a little on the road if it is practicable. . . .

Two of the Judges are widowers, and of course objects of considerable attraction among the ladies of the city. We have fine sport at their expense, and amuse our leisure with some touches at match-making. We have already ensnared one of the Judges, and he is now (at the age of forty-seven) violently affected with the tender passion. Being myself a veteran in the service, I take great pleasure in administering to his relief, and I feel no small pride in remarking that the wisdom of years does not add any thing of discretion to the impatience, jealousies, or doubts of a lover.

The breakfast bell has just rung; it was quite musical to my ears this morning, although on other occasions its loud tones are harsh and ungenial. . . .

Your affectionate husband,

JOSEPH STORY.

TO WILLIAM FETTYPLACE, ESQ.

Washington, February 18th, 1812.

DEAR BROTHER:

Nothing could have been more grateful to me than your kind letter. With the opinions expressed by you on the subject of a Navy, I most perfectly coincide; and I regret exceedingly that Congress have in this particular been so blind to their real interest. However, the Navy has gained a great many new advocates. Three years ago the numbers were, at least, two to one against it; now, the majority is scarcely three individuals. The talents, too, of the House, are on the side of the Navy. You may depend, that if war ensues, the Navy spirit will triumph over every obstacle. You must not, however, impute a dislike to a Navy as a dislike to commerce. Many men here are very honest in the belief, that any Navy we could create would be insufficient to protect us; nay, would offer new temptations to Great Britain to injure us, and therefore, in the present state of the world that it is impracticable for us to support a Naval system. To be sure, I think them all wrong; but time must be given to loosen their prejudices, and to diffuse a convincing light. When you find South Carolina, and Kentucky, and Tennessee in the present Congress, decidedly for the system, you may be assured that its triumph is not distant. Read the masterly speech of Mr. Cheves on the subject, and you will agree with me, that sound views prevail among the leaders of the party.

I think the prospect of war begins again to thicken. There are many, very many members who appear unshaken in their determination to have it, unless Parliament repeals the orders in council. Some hesitate, some are decidedly for peace; but there will be a great and resolute struggle when the time approaches. Perhaps, at no period since the independence of our country will there have been a more interesting crisis. The zeal, the chivalry, the high resentment of many of our



leading men, cannot be subdued without a violent exertion, and I learn from all quarters that the President is unhesitatingly for war. . . .

Give my love to my mother, and to Hetty and your children, and believe me, very affectionately,

Your friend and brother,

JOSEPH STORY.

Upon first coming to the Bench, my father found the docket in his Circuits overloaded with penal actions and cases of seizure arising under the embargo and non-intercourse systems, which had been suffered to accumulate in consequence of the age and infirmity of his predecessor in office, Mr. Justice Cushing. From a similar reason, a great number of Common Law cases had been brought up to the Circuit Court on appeal from the District Court. The docket was almost appalling at first. It had been the former practice of the Circuit Court, following that of the State Courts, to permit appeals from the District to the Circuit Court in jury cases at Common Law; but immediately upon my father's assuming his judicial functions, he delivered the elaborate judgment of *United States v. Wonson*, (1 Gallison, R. 5,) in which he held that no appeal lay from the District to the Circuit Court in other than civil causes within the Admiralty and Maritime Jurisdiction, and that when a cause had been once tried by a jury in the lower Court, it could not be brought up on appeal, to be tried by another jury in the superior Court but could come up only by writ of error on some grounds of law. By this decision, in which the District-Attorney acquiesced, no less than one hundred and thirty cases were at one blow struck from the docket.

The duties of a Judge of the Supreme Court of the

United States are not confined to the decision of cases originated in that Court, but embrace those arising in the allotted States in which he holds his Circuit Courts during the intervals of the sessions of the Supreme Court. The States allotted to my father, as his circuit, were those on the seaboard of New England, — Maine, New Hampshire, Massachusetts, and Rhode Island. In each of these, two terms of the Court were annually held.

The jurisdiction of the United States Courts is not confined to any one branch of jurisprudence. It extends over the Common Law, Admiralty, and Equity. And as its Circuit and District Courts have exclusive cognizance of all matters strictly within the Admiralty Jurisdiction, whether on the Prize or the Instance side of the Court, it will at once be manifest that the circumstances of time and place alone must have rendered the judicial duties of my father's circuit peculiarly onerous.

When he came upon the Bench, the character and interests of the New England States were purely commercial and maritime, their natural position having given that direction to their energies, and legislation not having determined them, as it afterwards did, towards manufactures. The large proportion of capital invested in shipping, necessarily generated curious and perplexing questions of admiralty law, respecting the rights, duties, and liabilities of ship-owners, ship-masters, mariners, and material men; while our bleak and dangerous coast, strewn by the winter with wrecks, created numerous cases involving the law of salvage and marine insurance, all of which came before the Circuit and District Courts for adjudication.

Other causes, however, besides natural position and the



investment of capital, conspired to give a peculiar character to the questions which my father was first called upon to decide. The embargo and non-intercourse acts, plentifully engendering cases of seizure for violation of their provisions, had been for some time in operation when he was appointed, and immediately afterwards, in 1812, war was declared between England and America. This not only created the system of licenses and collusive captures, but gave to the commercial energy of the country the detestable direction of privateering. The power of capital and enterprise, before cramped and crippled by the restrictive policy of the times, now found vent. Trade, long imprisoned in shipping, came forth armed. The merchant became the marauder. From every port of the New England States ships, which had lain rotting and warping in the sun, issued new rigged as privateers, now returning with prizes, now captured by the enemy. The necessary result of such a state of things was that the Circuit Court was flooded with cases involving questions of Prize Law, not only difficult and new in their nature, but so deeply trenching upon the passions and interests of the parties, as to be in every way delicate and embarrassing.

It is impossible fully to appreciate the difficulties of my father's position, without taking into consideration the condition of the law he was called upon to administer, at the time when he came to the Bench. The principles of Admiralty and Prize Law, now so clearly defined, were then unsettled and imperfectly understood. The limits of their jurisdiction were vague and obscure. Their practice was almost formless. Italy, the birthplace of the Maritime Law, on whose shores its earliest off-



spring, the renowned Consolato del Mare was born, had enriched it in later times by the eminent works of Straccha, Roccus, Casaregis, and Targa. The Ordonnance de la Marine of Louis XIV., the Code de Commerce, with Valin's masterly Commentary, the Treatise of Emerigon on Insurance, and the works of Pothier and Cleirac had moulded it into shape and system in France. Among the Northern nations of Europe, Bynkershoek, Grotius, Puffendorf, and Heineccius had developed the general law of nations; and Peckius and Weytsen had illustrated the maritime law. But in none of its departments had England made more than slight advances in commercial law, at the time when, in 1756, Lord Mansfield came to the Bench,—Welwood's compilation of Sea Laws, the articles preserved in the Black Book of the Admiralty, and the imperfect and inaccurate treatises of Molloy, Malynes, and Marius being nearly her whole contribution to that branch of Jurisprudence. During a period of thirty-seven years the powerful mind of Mansfield was engaged in clearing up and laying out this whole province. And to his great learning, enlarged views, and sound judgment, the commercial law of England at the present day is more indebted than to any single mind. The doctrines of Insurance were almost created by him in his own country. Into every department of the common law he infused the spirit of equity. He engrafted on its Saxon and Norman limbs the best scions of Continental jurisprudence. He expanded its principles and liberalized its nature, bursting open and overflowing with equity the narrow channels of Feudalism. But he was not called upon to administer Admiralty or Prize Law, and he has left but few cases

in which their principles are laid down or illustrated,— and even in those few, they have been pressed into the reluctant mould of the common law.

Mr. Park in his Treatise on Insurance says,—

“I am sure I rather go beyond bounds, if I assert that in all our reporters, from the reign of Queen Elizabeth to the year 1756, when Lord Mansfield became Justice of the King’s Bench, there are *sixty* cases upon matters of insurance. Even those cases which are reported, are loose notes, mostly of trials at *Nisi Prius*, containing a short opinion of a single Judge, and very often no opinion at all, but merely a general verdict.”

At the time when Sir William Scott was appointed to the Bench in England, in 1798, Admiralty and Prize Law were in a condition of utter feebleness. Their principles were foreign to the English law, and were received with coldness and distrust. They had not only to struggle against ignorance, but against prejudice; and except that the great mind of Lord Mansfield had, by its liberalizing influence, prepared a path for their coming, they might scarcely then have made good their foothold in England, though introduced so auspiciously by the elegant opinions of Sir William Scott. It is in his elaborate judgments that they found not only their fullest, but their sole adequate expression in England. Of these decisions, six volumes of Robinson’s Reports were all that had been published when my father was appointed to his judicial seat.

In America, the Admiralty Law had received but little illustration. A few cases in the Reports of Dallas, and the first five volumes of Cranch, a small volume of Bee’s



Reports, Mariott's Admiralty Forms, and a short historical essay on its civil jurisdiction, which, together with a slender collection of Precedents, accompanied Mr. Hall's translation of Clerke's Praxis, constituted the whole contribution of America to this department. The judgments of Sir William Scott were subject to violent prejudice in this country, not only on account of their novelty, but of the irritated relation of America to England.

Such was the condition of Admiralty and Prize Law, when my father came to the Bench. Some of these doctrines had been enunciated and developed with great power by Sir William Scott, but they had been received with little favor. Some few had been adjudicated in America. But as a system, they had neither fulness nor precision. There was a general jealousy of their jurisdiction, and fear of their power. For all practical purposes, they were new sciences. But the circumstances of the times demanded a development and application of new principles. The non-intercourse and embargo acts, by alternately checking commerce, and then giving it a false direction, created cases confessedly new in their character, and which were not only without precedent, but beyond the reach of established rules. It became, therefore, necessary to build up a new body of law, to open untrodden paths, to reduce general principles to specific form and practice, to apply settled rules to curious and complicated facts, and to educe from conflicting elements clear, just, and practical doctrines. Cases daily occurred which had never before presented themselves in a similar aspect. The conflicting rights of captors and claimants, of neutrals and belligerents, trading



under licenses, or privateering under letters of marque and reprisal, were to be adjusted. The incidents of the civil contracts of mariner, ship-owner, and master, and their rights, duties, and liabilities on the Instance side of the court, then loose and indeterminate, were to be defined. And the Court whose duty it was to decide upon these important subjects, was forced to act comparatively without a guide, and oftentimes to create the law of the case. Cut off by the war from the benefit of the learned judgments which Sir William Scott was then making in England, my father was engaged almost alone and unaided in building into system the Admiralty Law in America, in the same manner and at the same time that Sir William Scott was performing a similar service for England. By far the greater number of cases decided by him during the early part of his Judicial Life are questions arising under the Admiralty and Prize Laws.

To the mastery of the principles governing this branch of Jurisprudence he accordingly gave his most earnest labor, investigating its foundations, and making a careful study of all the civilians whose treatises he could command. Here, however, he met with a great obstacle. Non-intercourse and war rendered it particularly difficult to obtain the older works from abroad, while in the libraries at home, in consequence of the general ignorance and jealousy on the subject, few were to be found, and these few only at great trouble and expense. In July, 1813, he writes to his friend, Mr. Williams, as follows:—

“I wish Mr. Hall to publish in his Law Journal, Sir Leo-  
line Jenkins's Argument on the Admiralty Jurisdiction,—

and, indeed, all his legal opinions and dissertations at large. They are full of instruction, and particularly useful in Prize Law. At this moment they would be peculiarly valuable. I do not know that there are more than two copies of Sir Leoline Jenkins's works in this country. One (I hear) is in the Department of State. Another is in Mr. Dallas's possession at Philadelphia. I would give fifty dollars for a copy of Sir Leoline's works. Pray help Mr. Hall to this truly important undertaking."

In another letter he is making search for a copy of Bynkershoek, and after finally procuring one at a large cost and with considerable difficulty, it proves to be an imperfect copy, one third part of which, at least, is missing.

In another letter to Mr. Williams, dated August 24th, 1812, he recommends certain books as a basis of a knowledge of Admiralty; and this will show what sort of a library on this subject was then within the means of an American.

TO HON. NATHANIEL WILLIAMS.

Salem, August 24th, 1812.

MY DEAR FRIEND:

I thank you for your late communications, which in addition to my personal interest in the events, have enabled me to counteract the false and exaggerated rumors which have been industriously circulated as to your recent tumults at Baltimore. You would be surprised and disgusted at the thousand arts which have been used to inflame the public mind here against the whole Southern States; and every little trick which malignity could invent, has been put in motion at the head-quarters of good principles, to throw odium upon Baltimore, and through her upon the Adminis-



tration. I doubt if it be possible that the good people in Massachusetts should ever know the truth on this subject, and indeed upon any other which political ingenuity can draw into its vortex; so many thousand avenues of misrepresentation are open, and so few of truth. It is a deliberate object to inflame animosities between the Northern and Southern people, and thereby promote more readily a separation of the States. I am thoroughly convinced that the leading Federalists meditate a severance of the Union, and that if the public opinion can be brought to support them, they will hazard a public avowal of it. The Massachusetts Convention proposed by the *honorable* House of Representatives is unquestionably designed to pave the way. I abhor their conduct! Gracious God! that the people who led the van in the Revolution, should be the first to sell their liberties to a few designing, ambitious men, who hate even the name of patriotism!

. . . If Bynkershoek yet remains in the bookseller's hands, take it on my account; the war has whetted my appetite for it. I have been most industriously reading Prize Law, and have digested into my common-place books every thing I could find. I advise you to read diligently on the subject. It is a beautiful science. First read the letter of Sir William Scott, and Sir John Nicholl to Mr. Jay, which is prefixed to the American edition of Robinson's Reports. Next read the Prize Cases in Dallas and Cranch; next the translation by Duponceau of Bynkershoek on War; next Robinson's Admiralty Reports, and connected with this latter, Marriot's Admiralty Forms. You may also run your eye over the notes in Robinson's *Collectanea Maritima*; they are a useful compend of some points of Prize Law.

I have touched on this subject from a hope that you will be engaged deeply in the Admiralty. I have no doubt that its jurisdiction rightfully extends over every maritime contract and tort, and the more its jurisdiction is known, the more it will be courted. I hope the Supreme Court will have an



opportunity to enter largely into its jurisdiction both as an Instance and a Prize Court.

In great haste, I am very affectionately,

Your friend,

JOSEPH STORY.

To the office of creating and administering this branch of law he brought peculiar powers. The comprehensive grasp of his mind enabled him to subject to one principle many fragmentary and disconnected details. His clear insight and decision of judgment gave rapidity and safety to his conclusions, and saved him from hair-splitting doubts, while his independence of character lifted him above the influence of popular clamor or political favor. The liberal cast of his mind, also, eminently fitted him for his task. The large principles of the Law of Nations were peculiarly grateful to him. In this respect he resembled Lord Mansfield. Yet while he delighted in the expansive doctrines of equity, his severe training in the feudal law and in the science of special pleading, had given him habits of precision and logic, which operated to check him from excessive generalizations. His ardor in entering upon the performance of his judicial functions, was equalled by the patient and persevering diligence with which he examined every question. The opinions given in his early cases are reasoned out with great care and elaboration, and before any advancing step is taken, the ground is cautiously tested. No objection, which could be made to the doctrine laid down, is unanswered, and every position is fortified by cogent argument. A large and liberal spirit pervades his judgments on the law of nations; and he rejoices rather to place them on the broad

basis of international comity and universal justice than on the narrow and technical rules of municipal jurisprudence.

Another great department to which my father devoted the earnest labor of his judicial life, with distinguished success, is Equity. And it may be proper here, briefly to refer to the condition of this branch of jurisprudence, at the time when he came to the Bench. I do not know that this can be done more concisely and satisfactorily than by citing the following passage from his Commentaries on Equity Jurisprudence.

“In America, Equity Jurisprudence had its origin at a far later period than the jurisdiction properly appertaining to the Courts of Common Law. In many of the Colonies, during their connection with Great Britain, it had either no existence at all, or a very imperfect and irregular administration. Even since the Revolution, which severed the ties which bound us to the parent country, it has been of slow growth and cultivation; and there are still some States, in whose municipal jurisprudence it has no place at all, or no place as a separate and distinct science. Even in those States, in which it has been cultivated with the most success, and for the greatest length of time, it can scarcely be said to have been generally studied, or administered, as a system of enlightened and exact principles, until about the close of the eighteenth century. Indeed, until a much later period, when Reports were regularly published, it scarcely obtained the general regard of the profession, beyond the purlieus of its immediate officers and ministers. Even in the State of New York, whose rank in jurisprudence has never been second to that of any State in the Union, (if it has not been the first among its peers,) Equity was scarcely felt in the general administration of justice, until about the period of the Reports of



Caines and of Johnson. And, perhaps, it is not too much to say, that it did not attain its full maturity and masculine vigor, until Mr. Chancellor Kent brought to it the fulness of his own extraordinary learning, unconquerable diligence, and brilliant talents. If this tardy progress has somewhat checked the study of the beautiful and varied principles of Equity in America, it has, on the other hand, enabled us to escape from the embarrassing effects of decisions, which might have been made at an earlier period, when the studies of the profession were far more limited, and the Benches of America were occasionally, like that of the English Chancery in former ages, occupied by men, who, whatever might have been their general judgment or integrity, were inadequate to the duties of their stations, from their want of learning, or from their general pursuits. Indeed, there were often other circumstances, which greatly restricted or impeded a proper choice; such as the want of the due enjoyment of executive or popular favor by men of the highest talents, or the discouragement of a narrow and incompetent salary."

In an article upon Johnson's Reports, written by my father for the *North American Review* in 1820, he thus describes the condition of Equity when Kent was made Chancellor of the State of New York, in 1814, two years subsequent to his own appointment as Judge.

"It required such a man, with such a mind, at once liberal, comprehensive, exact, and methodical; always reverencing authorities, and bound by decisions; true to the spirit, yet more true to the letter of the law; pursuing principles with a severe and scrupulous logic, yet blending with them the most persuasive equity;—it required such a man, with such a mind, to unfold the doctrines of chancery in our country, and to settle them upon immovable foundations. Without doubt, his learned predecessors had done much to systematize



and amend the practice of the Court. But it cannot be disguised, that the general state of the profession was not favorable to a very exact and well regulated practice. There were, comparatively speaking, few lawyers in the country, who had devoted themselves to Courts of Equity. In general, the ablest men found the Courts of Common Law the most lucrative, as well as the most attractive for the display of their talents. They contented themselves with occasional attendance at the Chancery Bar, and placed their solid fame in the popular forum, where the public felt a constant interest, and where the great business of the country was done. In many of the States no Court of Chancery existed. In others it was a mixed jurisdiction, exercised by Courts of Common Law. And in those, where it was administered by a distinct judicature, there is great reason to fear, that the practice was very poor, and the principles of decision built upon a rational equity, resting very much in discretion, and hardly limited by any fixed rules. In short, the doctrines of the Courts depended much less upon the settled analogies of the system, than upon the character of the particular judge. If he possessed a large and liberal mind, he stretched them to a most unwarrantable extent; if a cautious and cold one, the system fainted and expired under his curatorship. This description was applicable, perhaps, without any material exceptions, to the equity jurisprudence of our country; and New York comes in, probably, for a full share of it. At least, there are in the volumes now before us abundant proofs, that neither the practice nor principles of the Chancery of that State had, previously to the time of Mr. Chancellor Kent, assumed a steady and well defined shape. We see, for instance, that points of practice are often most elaborately reasoned out by this learned Chancellor, in various opinions, as if the case stood *de novo* before him, and he was called upon for the first time to apply the English practice to our own. This could hardly have occurred, if there had been a constant, settled channel in which it had previously flowed."

These remarks in respect to Chancellor Kent are equally applicable to my father. To their united efforts the American system of Equity Jurisprudence and Practice, now so fair and complete in its proportions, is mainly due. They were in some respects its creators. They disencumbered it of many of the useless forms and complicate processes in which the English system is entangled, and gave to it that certainty and despatch, which is in England its greatest want. Fortunate was it that this task fell to men, whose genius and learning enabled them to give it succinctness of method and harmony of proportion. They labored together for many years, side by side, with the warmest friendship, and have both left imperishable monuments to their fame, in their judgments in Equity.

Still another department, which my father was called upon to administer when he came to the Bench, and of which he was destined to be in great measure the creator, was the Patent Law. In England, the principles by which it was governed were involved in great doubt, the decisions being very contradictory, and the opinions of the Courts fluctuating between the fear of monopoly on the one side and the love of liberal principles on the other. Some Judges, attached to the technical rules of the Common Law, narrowed down the rights of inventors to little more than a form, while others, whose bias was towards Equity, construed them largely. In this uncertain condition of things, little that was practically useful was to be derived from the English decisions. In the United States, the Patent Law was wholly immature and undeveloped. The acts of Congress were not only imperfect in themselves, but they had received no construction from



the Courts, and general ignorance prevailed as to the doctrines applicable to the subject. Besides, the interests of the country having been essentially commercial and agricultural, the inventive powers had been little stimulated, and very few cases involving principles relating to patents had come before the Courts for adjudication. But immediately prior to my father's appointment as Judge, the restrictive policy of Mr. Jefferson, by crippling commerce, had turned the attention of the maritime States to their internal resources, and the manufacturing interest and mechanic arts began to develop themselves. The inventive faculties of the people were aroused. The growth of manufactures begat the prolific construction of machines and novel modes of operation, as well as modifications of those already in use, and these in turn gave rise to many embarrassing questions as to the conflicting rights of inventors and the public.

The Yankee is essentially an inventive and constructive creature. He has no habits of loyalty, and no reverence for age and established customs. He likes short cuts. What is new pleases him because it is new. Being in a young country, he is continually put to shifts, and his mind naturally turns to the use of new means to produce old ends. The fact that a method has long existed, is sufficient to set his mind on the stretch to invent some improvement upon it. He has much to do in a short time, with little means, and his powers are naturally tasked to find a mode in which toil, time, and expense are saved. In a crowded population, man has a tendency to become a part of a machine; his intelligence is generally limited to his specific occupation, and his position, which is often a matter of chance, however ill-



adapted to his faculties, cannot easily be changed. But where there are few persons, and services are in demand, the case is different. Labor is not now apportioned in this country. Any one may follow the bent of his wishes and his talents in choosing his occupation. The mechanic is not blindly bound to a single function. He is necessarily a jack of all trades and of every part of his trade. Every operative acquires a general knowledge not only of the machine he tends, but of the business in which he is a subordinate. And the constant prize of fortune, involved in a valuable invention, acting upon this knowledge, sharpens his perceptions, and gives direction and concentration to his thoughts.

In such a condition of things, and with this habit of mind, it is evident that, as soon as the attention of the people was directed to manufactures, machines would be invented on all sides, and on those already invented improvements would be engrafted. Formal variations, substitutions of mechanic forces so as to alter the form without changing the nature of machines, and every species of direct and indirect appropriation of inventions was resorted to; for sagacity has its reverse side of cunning. Cases began to arise involving all the principles applicable to Patents; and to the adjudication of these, the existing rules were not only to be practically applied as they never before had been, but new rules and modifications were demanded. The questions were often so novel, that counsel were forced to argue, and the Court to decide, without chart and upon general principles. I have often heard my father relate, that in several of the early cases tried before him, the gentlemen engaged in them apologized for the mode in which they had been

conducted, saying, that the law was so without precedent and forms, that they knew not how to proceed.

In the trial of the first Patent case as judge, he was very anxious. He was perfectly familiar with all the decisions on the subject; but the counsel were distinguished; the question was important; and he felt that the law applicable to it was vague and unsettled. He used to say, that during the opening argument he was as nervous as Goldsmith when "She Stoops to Conquer" was produced, and if he had worn a wig, he should certainly have sweated through it, like the poet. But the case had not proceeded far, before he found that he knew more of the law and practice than the counsel, and from that time he became perfectly at his ease.

Such was the condition of this department of the law when my father came to the Bench, and fortunate was it that its first administration fell into so able hands. The character of his mind at once determined him to a liberal construction, and he developed it upon the broad principles of Equity. There are probably no cases which more severely call into requisition the sagacity, readiness, and clear-headedness of a Judge, or in which the law is more difficult of application, and the questions of a more subtle nature, than those which arise under the Patent law. To understand a machine so as clearly to apprehend the evidence and apply the right rule to the exact facts is a function to which, even in the developed state of the law, no Judge is truly competent, unless he be possessed of great quickness and acuteness, and often of considerable information in mechanics. But at the time when the law was wholly unsettled, and the office of the Judge was not merely to apply it, but often

to create it, it is easy to see how much more difficult the task must have been. In the trial of Patent cases the ability of my father was eminently conspicuous. His remarkable rapidity of apprehension and clearness of judgment made the duty of counsel comparatively light. He never needed to have a proposition or explanation repeated, but seemed almost at once to grasp the bearing of all the facts, and perceive the point of stress.



## CHAPTER VIII.

### JUDICIAL LIFE.

VALEDICTORY SPEECH TO THE REPUBLICANS — LETTER IN RELATION TO THE DISTRICTING OF MASSACHUSETTS — LETTERS ON THE REFORM OF THE CRIMINAL CODE — JUDGMENTS IN THE "JULIA," THE "NEREIDE," AND THE "EUPHRATES" — LETTER DESCRIBING THE PHILADELPHIA LUNATIC HOSPITAL AND A BALL IN HONOR OF PERRY — EULOGY ON LAWRENCE AND LUDLOW — SKETCHES OF MR. PINKNEY AND MR. DEXTER — LETTERS ON THE NEWS OF PEACE BETWEEN AMERICA AND ENGLAND — DEATH OF HIS DAUGHTER MARY — LETTERS IN RELATION THERETO — HIS VIEWS ON THE DUTY OF CHEERFULNESS — GOES TO WASHINGTON — HIS JUDGMENT IN THE CASE OF GREEN *v.* LITER — PUBLICATION OF THE FIRST VOLUME OF GALLISON'S REPORTS — CASE OF DE LOVIO *v.* BOIT ON THE ADMIRALTY JURISDICTION — LETTERS RELATING TO A BANKRUPT LAW AND THE DELIVERY OF A COURSE OF LAW LECTURES — HIS SCRUPULOUS EXACTNESS IN MATTERS RELATING TO HIS JUDICIAL OPINIONS.

WHILE my father was in the Legislature of Massachusetts, the question as to the division of the State into Senatorial Districts had formed a subject of discussion, but it was not acted upon until after his connection with that body had ceased. He had been uniformly opposed to this measure, although it was introduced, advocated, and finally carried by the party to which he belonged. Afterwards, having been retained as counsel in a case arising incidentally out of a resolve of the Legislature respecting his clients, he attended, in their behalf, a public caucus of the Republicans, where, in a valedictory

speech to his friends, which was the last act of his political life, he went into a general review of their course as a party, and among other subjects touched upon the districting of the Commonwealth. In the following letter, he corrects certain misrepresentations in regard to his remarks, which had appeared in the public press:—

TO SAMUEL P. P. FAY, ESQ.

Washington, March 10th, 1812.

MY DEAR FRIEND:

Your letter reached me yesterday, and I thank you for its survey of "matters and things in general." About the same time, I presume, you were reading one which I lately wrote you from the head-quarters of national politics.

It is strange what false reports will circulate, and how easily they are credited. It is a fact, that I never heard or saw any account of the Senatorial districts of Massachusetts, until I saw them published in the newspapers. I neither was consulted nor gave any opinion as to the actual distribution that was to be made. The evening before my departure, I attended a caucus to explain to my political friends the reasons why I thought that the Resolve respecting Skinner's sureties ought to be passed. You may remember that it proposed the subject to be finally adjudicated by the Supreme Court upon Chancery principles. I had been counsel for the sureties in the actions at law, and was solicited to attend for this purpose. In the course of the evening, I took occasion to remark, that the valuation was then before the House; that it was probably as correct as could be expected; that local interests and local prejudices would on that subject peculiarly prevail; and if the valuation were to be reëxamined through every part, it was highly probable that conflicting interests would produce a result not more just or correct; and that it would undoubtedly prevent the Legislature from districting

the committee at that session; that I should consider it a misfortune not only upon party, but national principles; that a postponement should take place to the next session; that the districting at the present session would undoubtedly, if done *upon fair and honorable principles, and without any violation of the public interests*, produce a Republican majority; that if postponed, it was impossible to say who, at the next election, would be in power; and a districting formed altogether on party principles might then be made, highly injurious; at least, that it would be in the power of other men so to do; that war was probably near at hand, and it was peculiarly desirable that Massachusetts should, so far as her strength fairly lay on the Republican side, be enabled to give support to the national government; that harmony among men of the same political sentiment at the present crisis, was of all things on earth the most important; and that I trusted, with the great objects of national honor in view, they would avoid all local jealousies and violence, and unite heart and hand in the cause of their country.

To my best recollection, this was the substance of my remarks, which were altogether without preconcert or consideration. No specific measure of general policy was either discussed or offered. My remarks were in the nature of a valedictory, or a view of general results, and such as a Republican would naturally press on his own party; but they were by no means pointed to any class of measures whatever. I will further say, that I had no knowledge whatever of any system of measures which was to be pursued.

I ought however to add, that I was perfectly a friend to a district division of Essex, on general principles; I thought, and still think, that it was but just that a fair representation should take place of both the parties there; and I am sure that it might have been done without any injury whatsoever. A general system of districts, to meet my ideas of equity, should be formed on the basis of equal and honorable representation, either of parties or interests. I did not, however,



say one word about modifying districts in the short address to which I have alluded.

I have been thus explicit, not because it is now of any consequence to myself or to the public what I thought; but, because to your own mind I could always wish to present myself as I am, and I could not endure for a moment that you should suppose that, warm as I am in support of my own principles, I could either honor or adopt a system which should suppress an equal representation.

But enough in all conscience on the subject of politics, which, I trust in God I have quitted forever.

The Court will probably adjourn on Saturday next, after a six weeks' session, uncommonly tedious and laborious. I am, however, quite pleased with judicial investigations; they brace the mind to an intense exertion, and an interesting responsibility.

Your affectionate friend,

JOSEPH STORY.

The next letters show my father's first movement in relation to a reform of the criminal code of the United States, a subject in which he afterwards became deeply interested. By these and subsequent letters, he drew attention to the incomplete legislation of Congress in respect to crimes against the United States, and obtained, by his exertions, the passage of several acts of Congress, of two of which he was the author. He was also subsequently one of the commissioners appointed by the Governor of Massachusetts, to take into consideration the codification of the State Criminal Law, and wrote an elaborate Report in its favor.

TO HON. NATHANIEL WILLIAMS.

Salem, October 8th, 1812.

MY DEAR FRIEND:

. . . I think the Junto are beginning to lower their tone. A division of the States has been meditated, but I suspect that the public pulse was not sufficiently inflamed; the fever is over for the present. Pray induce Congress to give the Judicial Courts of the United States power to punish all crimes and offences against the Government, as at common law. Do not suffer conspiracies to destroy the Union to be formed in the bosom of the country, and yet no laws exist to punish them. I love the Constitution; it is the bulwark of our liberties, and it would grieve my soul most deeply and bitterly to have it crushed by factions; the laws ought to be made to reach all public crimes.

I have no doubt that Madison will receive the votes of Massachusetts, if the Republicans have any to give. Clinton has not, to my knowledge, any party here; he has created a paper, but it does not touch the people. It is quite doubtful whether there will be any electors in our State; the House and Senate are of opposite politics, and it is very questionable if either will yield. I hope anxiously for the safety of Maryland. Has Clinton any considerable influence with you? Since Vermont turned out so boldly and bravely, there is not quite so much temptation to play a deep game for the Presidency. I do not want to reproach Clinton, but I will say, that the present was the last occasion which patriotism ought to have sought to create divisions. I could not cherish in my heart the man who would lead such an enterprise.

. . . . .  
Yours, as ever, affectionately,

JOSEPH STORY.

TO HON. NATHANIEL WILLIAMS.

Salem, May 27th, 1813.

MY DEAR FRIEND:

During the late threatened attack upon Baltimore, I felt exceedingly anxious on your account. Though I had no doubt of the capacity of your truly patriotic city to assert her rights and protect her firesides, yet I feared much from the temporary embarrassments into which you would all be thrown. You would be amazed at the Christian calmness and philosophical coolness with which the peace patriots here have anticipated all the horrors of a sack of Baltimore. The burning of Havre-de-Grace is deemed a legitimate exercise of the rights of war. It is truly surprising how easily New Englanders learn all the new and expedient promulgations of belligerent rights.

From my very soul I detest the wanton barbarity of the British in these predatory excursions. They have completely destroyed in my mind all respect for British arms and British honor. I can perceive but little difference between the butchery of Indians and the burning of the homes of inoffensive, unarmed people, without any great object to authorize it.

I sent Mr. Pinkney, a few days since, some sketches of improvements in the criminal code of the United States. It is grossly and barbarously defective. The Courts are crippled; offenders, conspirators, and traitors are enabled to carry on their purposes almost without check. It is truly melancholy, that Congress will exhaust themselves so much in mere political discussions, and remain so unjustifiably negligent of the great concerns of the public. They seem to have forgotten that such a thing as an internal police or organization is necessary, to protect the Government and execute the laws. I believe in my conscience many members imagine that the laws will execute themselves. This very day I had an application to discharge a soldier from imprisonment, who



was arrested for debt. The law has declared him free from arrest, but the Courts of the United States are expressly prohibited from issuing a writ of *habeas corpus*, except in certain specified cases, and this is not within the exception. The consequence is, that he must remain in jail, and so might all the soldiers of the army if they were cantoned in Massachusetts. I have been told that the service has suffered exceedingly from *fraudulent arrests*; will Congress ever provide against such abuses? Pray, speak to Mr. Pinkney on this subject, and urge him to apply his talents to Congress at this session. Energy, promptitude, and precision are necessary, or the nation is ruined.

Give my love to your wife, and kiss your children for me.  
With a flying pen, I am, as ever,

Your affectionate friend,

JOSEPH STORY.

The next letters explain themselves.

TO HON. NATHANIEL WILLIAMS.

Salem, July 14th, 1813.

MY DEAR FRIEND:

. . . I have been a good deal engaged of late in the business of my Court, and have had many very interesting cases. In some of them I have delivered very elaborate opinions; at least, they cost me considerable labor. My opinion in the license case of the ship *Julia* [1 Gallison's R. 594] has been published in the *National Advocate*, at New York. Have you seen it? . . .

I have had before me, at Rhode Island, the *Euphrates* and cargo, captured by Commodore Barney. [1 Gallison's R. 451.] I had no difficulty in deciding in favor of the captors, and in rejecting the claim of the United States, which I considered as an outrageous assertion of prerogative right. It is painful to see how poorly the United States are served by their agents. The most odious exactions are sometimes pressed under their

authority, and the most extraordinary claims asserted. Their name is used often to subserve individual interests, and sometimes in a manner that reflects little honor on the Government. I am sure that the Government cannot, and never would authorize such proceedings. The high and honorable discretion which the law supposes in public affairs, has in some courts been made subservient to interests with which the Government never had any concern. In this way a very undeserved odium sometimes falls on it. I have endeavored to suppress this feeling whenever in my power, and whatever may be my other defects, I watch with a jealous eye over all the affairs of the Court, and I have already reformed many abuses.

. . . I send you a newspaper containing our celebration of the 4th of July. The odes to the tune of "Rise, Columbia," and "To Anacreon in Heaven," are composed by me; you will perceive that I have lost no fervor in the cause of my country. God prosper it!

Yours as ever, affectionately,

JOSEPH STORY.

TO HON. NATHANIEL WILLIAMS.

Salem, August 3d, 1813.

MY DEAR FRIEND:

. . . I send you the National Advocate of the 26th of June, containing my opinion in the case of the Julia. As I have no other copy I will thank you to have it inserted in Niles's Register, and to send me a duplicate copy of the number. I have underscored the material *errata*, and you will be able by my former letter to make a perfect transcript. I have understood that soon after the war, Mr. Pinkney was inclined to the opinion that licenses were not illegal. If my opinion should fall in his way I should be glad to learn in what manner he views my reasoning. The cause has now gone to the Supreme Court, and he will of course be engaged in behalf of the captors. I expect a difference

of opinion among the Court; the great questions of national law have not been familiarized among us. . . .

I am wearied with perpetual complainings to you and to the Government as to the deficiencies of our criminal code. A disgraceful affair has happened in Boston, of the rescue of a prize by the owners. I should not be at all surprised that the actors should escape without animadversion, owing to defects in our criminal laws. Nor should I be astonished, that in all cases of American vessels seized, trading with the enemy, forcible rescues should be attempted hereafter even against our national ships. What Congress mean by their gross and mischievous indifference to the state of the criminal code I know not. In my opinion, the Government will be completely prostrated unless they give jurisdiction to their Courts and a common law authority to punish crimes against the United States. One would suppose that Congress believed the millennium was at hand, and that laws will execute themselves. I wish with all my soul that they would attend a little less to mere popular topics calculated to secure their elections, and a little more to the real and permanent interests and security of the Government. What think you of a Government where public crimes on the seas, are, with very few exceptions, left wholly unpunished, and crimes on the land are suffered to remain without the least criminal action?

Attempts also are made in Massachusetts to break down the Judiciary of the United States through the newspapers, and mean and miserable insinuations are made to weaken the authority of its judgments. For myself, I care little as to these things. I have determined to do my duty, and if popular odium follows, I shall at least have the consolation that I have satisfied my own judgment. I can perceive a path, which, without a great sacrifice of what the world would deem equity, might make me a very popular Judge of the Court at this moment; but I have great fears as to the character of a popular Judge in these times. I prefer to meet

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present prejudices, rather than hereafter to suffer the deepest regrets for judgments which I could not sustain upon principles of law or upon conscientious errors of reasoning.

A volume of my Reports is prepared by the reporter, but he finds here no person willing to print them and pay any value for the copyright. Our booksellers are poor, and law reports are not esteemed of so quick a sale as to induce a strong attachment to them. I hold now Cranch's manuscripts of the cases of 1812, which I am unable to dispose of for him, though I have offered them to several booksellers.

Pray question your Representatives in Congress on the subject of the Judiciary; threaten them into diligence, and at least at the beginning of the next session, pour upon them the whole artillery of the press.

Your affectionate and faithful friend,

JOSEPH STORY.

"The Julia," referred to in these letters, is a leading case on the subject of licenses, and will be found reported in the first volume of Gallison's Reports, (p. 594.) An appeal was made, and it was carried up to the Supreme Court of the United States, where the judgment of the Circuit Court was affirmed. The principle it lays down is, that a license or protection from the government of an enemy, found on board an American vessel, on a voyage to a neutral port in alliance with such government, the terms of which prove an intercourse with it, and a direct subserviency to its interests, subjects the vessel and cargo to confiscation, as a prize of war.

On the twenty-third day of August, 1813, my father delivered a eulogy at Salem on the occasion of the reinterment of the bodies of Capt. James Lawrence and Lieut.

Augustus C. Ludlow, who were killed on the 18th of June, of the same year, in the engagement of the Chesapeake with the Shannon, and were at first buried at Halifax, whence they were removed to Salem. This eulogy was written by snatches in two days, while my father was confined to his bed by illness. It was thought very favorably of at the time. In answer to a letter from the chairman of the committee of arrangements, asking for a copy of it for the press, he wrote as follows:—

TO THE HON. BENJAMIN W. CROWNINSHIELD, CHAIRMAN OF THE  
COMMITTEE OF ARRANGEMENTS.

August 26th, 1813.

SIR:

I have the honor to acknowledge your favor of this same date. It is well known to the committee of arrangements, that the eulogy pronounced on Monday last, was written under the pressure of extreme ill health, and during a few intervals from severe pain. With this apology for its imperfections, I submit it cheerfully to your disposal. Its errors will be readily pardoned by those who know how difficult it is to praise the dead when the public feelings have already pronounced the most emphatic eulogy.

I have the honor to be, with great respect,

Your very obedient servant,

JOSEPH STORY.

The following letter was written immediately after his arrival at Washington to attend the session of the Supreme Court:—

TO MRS. SARAH W. STORY.

Washington, February 5th, 1814.

MY DEAR WIFE:

I had great pleasure in visiting the Philadelphia Lunatic Hospital, which, on the whole, is rather superior to that in

New York. You have read of the mad philosopher in the *Man of Feeling*. I saw a perfect image of him in this institution, in a Mr. N——, formerly of the Island of Nevis. He was a gentleman of great respectability and considerable learning. I went into his apartment, was introduced to him, and received with great politeness. He was sitting at his table with a woollen cap on, and various paints in oyster shells before him, which he was busily engaged in using on some geographical and astronomical charts. He was pleased to show me several of his drawings of imaginary as well as real creations of this and of the invisible world. He reasoned well as to the objects and ideas on which he was engaged; but was utterly incomprehensible in his strange associations. He talked a great deal about the divine father and mother, and on one of his paintings, a map, showed me the divine mother drawn on a strange chariot by two horses. He assured me that she was not drawn by any application of harness or tackle, but by the impulse of "divine sympathy." He said that Galileo and Copernicus were not only erroneous in their theories of the world, but very bad men; and that Ptolemy was erroneous, but in his opinion was otherwise a good man. He showed me a great many painted maps of chaos and divine regions, which, with great good nature he explained, and on my taking leave, seemed highly gratified by my visit. Such is man! so thin is the partition that divides reason from insanity, and splendid imaginations from dull realities.

At Baltimore I saw our excellent friends Mr. and Mrs. Williams. They are in very good health, and were delighted in hearing and talking of you and our dear children. It so happened that, in the evening of our arrival, there was a ball given in honor of Commodore Perry, and the managers politely sent invitations to all our party. Fatigued as we were, we determined to attend. The scene was truly splendid,—at one end of the room there was a transparent painting representing the battle, and on a given signal the British flag



was struck and the American soon afterwards hoisted in its stead. The shouts and clapping were loud and reiterated. One impulse of joy and congratulation seized every heart. One person only seemed silent in the scene. It was the Commodore himself. He is a very handsome, intelligent, modest gentleman, and bears his unequalled honors meekly and calmly. He is scarcely turned of twenty-eight years, and yet has all the self-command of fifty. The assembly was uncommonly brilliant,—almost all of the beaux and belles of the city attended. I do not recollect ever to have seen a more interesting group of beauty and grace. The dresses of the ladies were very costly and superb. I quitted the assembly at ten o'clock, being exceedingly fatigued, and willing to resign a scene, which, however alluring, was not worth a moment's thought in comparison with the comforts of a home, the smiles of a wife, and the prattle of children. Farewell, my dear wife; may you ever be happy as you deserve, and rest assured, that never can I feel more bliss than when I see your eyes beam with pleasure in acknowledging me as your husband.

Yours, affectionately,

JOSEPH STORY.

The next letters contain interesting sketches of distinguished men at the Bar.

TO HON. NATHANIEL WILLIAMS.

Washington, March 6th, 1814.

MY DEAR FRIEND:

I have the pleasure to acknowledge your late favor. Since my residence here, I have been steeped to the very chin in business, and we are now almost overwhelmed with it. We have had great speeches from Mr. Pinkney and Mr. Dexter, and indeed, in general, the arguments of this term have been conducted with unusual ability. Mr. Dexter and Mr. Pink-

ney have sometimes been opposed to each other, and in the conflicts have roused themselves to most strenuous exertions. Every time I hear the latter, he rises higher and higher in my estimation. His clear and forcible manner of putting his case before the Court, his powerful and commanding eloquence, occasionally illuminated with sparkling lights, but always logical and appropriate, and above all, his accurate and discriminating law knowledge, which he pours out with wonderful precision,—give him in my opinion a great superiority over every other man whom I have known. I have seen in a single man each of these qualities separate, but never before combined in so extraordinary a degree. . . . I candidly acknowledge that Mr. Pinkney is my favorite at the Bar; I think he is fair in not urging points on which he does not rely with confidence, and acute in seizing the proper point of attack and driving the enemy from it by storm.

There have been some very clever men from Kentucky, who displayed ingenuity and learning; but all is lost in comparison with Mr. Pinkney and Mr. Dexter. Mr. Harper evidently sinks in the scale when weighed with them. He is highly respectable, but as an antagonist of these he cannot for a moment sustain his ground. . . .

I beg you to give my love to Caroline, and as you have chosen to prefer your daughter to your son, for no other reason that I can perceive, except that she is the youngest, I suppose you must give her the first kiss in my behalf; but at all events my old namesake shall have the second; I am not for deserting old friends. . . .

Yours, affectionately,

JOSEPH STORY.

TO MRS. SARAH W. STORY.

Washington, March 10th, 1814.

. . . We have had very great displays of eloquence. Mr. Pinkney and Mr. Dexter have particularly distinguished



themselves — sometimes opposed, sometimes colleagued together. Mr. Dexter's eloquence you have heard; he and Mr. Pinkney have called crowded houses; all the belles of the city have attended, and have been entranced for hours. I must, however, after all, give the preference to Mr. Pinkney's oratory. He is more vivacious, sparkling, and glowing; more select and exact in his language, more polished in his style, and more profound and earnest in his juridical learning. Mr. Dexter is calm, collected, and forcible, appealing to the judgment. Mr. Pinkney is vehement, rapid, and alternately delights the fancy and seizes on the understanding. He can be as close in his logic as Mr. Dexter when he chooses; but he can also step aside at will from the path, and strew flowers of rhetoric around him. Dexter is more uniform, and contents himself with keeping you where you are. Pinkney hurries you along with him, and persuades as well as convinces you. You hear Dexter without effort; he is always distinct and perspicuous, and allows you an opportunity to weigh as you proceed. Pinkney is no less luminous, but he keeps the mind on the stretch, and you must move rapidly or you lose the course of his argument.

Adieu, my dearest wife; may heaven bless you and our children.

Your affectionate husband,

JOSEPH STORY.

The next letter refers, among other things, to the establishment of peace between England and America.

TO HON. NATHANIEL WILLIAMS.

Washington, February 22d, 1815.

MY DEAR FRIEND:

. . . We are deeply engaged in business; very important cases have already been decided, and many are yet in advance. We have very able counsel; Messrs. Emmett, Hoffman, and Ogden of New York, Dexter of Massachusetts,



Stockton of New Jersey, and Pinkney of Baltimore. Mr. Pinkney and Mr. Emmett have measured swords in a late cause. I am satisfied that Pinkney towers above all his competitors. Mr. Emmett is the favorite counsellor of New York, but Pinkney's superiority was, to my mind, unquestionable. I was glad, however, to have his emulation excited by a new rival. It invigorated his exertions, and he poured upon us a torrent of splendid eloquence. . . .

Peace has come in a most welcome time to delight and astonish us. Never did a country occupy more lofty ground; we have stood the contest, single-handed, against the conqueror of Europe; and we are at peace, with all our blushing victories thick crowding on us. If I do not much mistake, we shall attain to a very high character abroad, as well as crush domestic faction. Never was there a more glorious opportunity for the Republican party to place themselves permanently in power. They have now a golden opportunity; I pray God that it may not be thrown away. Let us extend the national authority over the whole extent of power given by the Constitution. Let us have great military and naval schools; an adequate regular army; the broad foundations laid of a permanent navy; a national bank; a national system of bankruptcy; a great navigation act; a general survey of our ports, and appointments of port-wardens and pilots; Judicial Courts which shall embrace the whole constitutional powers; national notaries; public and national justices of the peace, for the commercial and national concerns of the United States. By such enlarged and liberal institutions, the Government of the United States will be endeared to the people, and the factions of the great States will be rendered harmless. Let us prevent the possibility of a division, by creating great national interests which shall bind us in an indissoluble chain.

Believe me, as ever,

Your affectionate friend,

JOSEPH STORY.

The following letters contain another picture of domestic grief. His daughter Mary, who was born on the 9th of April, 1814, died March 28th, 1815; and scarcely had this wound begun to heal, when on the 19th of October, in the same year, Joseph, then in his 6th year, — a bright, handsome, and promising boy, in whose growing childhood my father had watched with delight the tender reflections of his own early life and feelings, and whose future career he had painted with sanguine hopes, — died.

TO HON. NATHANIEL WILLIAMS.

Salem, May 8th, 1815.

MY DEAR FRIEND:

I feel very much obliged to you for your late kind letter. When I reached home, it was but a melancholy meeting. My youngest daughter, Mary, about eleven months old, was very ill, and in about a week she expired, to our unspeakable sorrow. This was indeed a most cutting affliction to my wife; the little girl was uncommonly handsome and intelligent, and promised us many days of future happiness. I may well exclaim, in the words of Young:—

“Early, light, transient, chaste as morning dew,  
She sparkled, was exhaled, and went to heaven.”

My wife has been very melancholy since this unfortunate event, and so indifferent is her health, that I propose to make a short journey into the country, with a hope of her convalescence. May you long be shielded from the pangs and sorrows of losses of this kind; though it will be almost miraculous if you should escape for any considerable length of time from an evil which seems the fate of all human connections. I know of no sorrow more bitter or more piercing than the sudden removal of the children of our love. This is the second time that I have buried a lovely daughter. As a



parent, you cannot but sympathize with us. Alas! this is the only consolation which the loss admits, and it is truly precious from the hands of friendship.

With a view to dissipate my grief, for it is unavailing, I have been latterly engaged in drawing up my dissenting opinion in the case of the *Nereide* (9 Cranch's R. 449.) I have now completed it; and never in my whole life was I more entirely satisfied that the Court were wrong in their judgment. I hope Mr. Pinkney will prepare and publish his admirable argument in that case; it will do him immortal honor.

Your affectionate friend,

JOSEPH STORY.

TO HON. NATHANIEL WILLIAMS.

Salem, September 28th, 1815.

MY DEAR FRIEND:

I owe you an apology for not before answering your interesting letter, but in truth I have been overwhelmed with public, private, and domestic business. My wife has been severely sick during the greatest part of the summer, and has hardly yet recovered any considerable portion of health. To add to my anxiety and affliction, my little boy has been again seized with the same disorder as in the last year, except that the symptoms have been, if possible, more alarming. He has now been ill about two months, and we have hopes (alas, they are but hopes,) that he is now slowly on the recovery. These two events have completely broken up all my studies and pleasures during the whole summer, and have exhausted and employed my time in the most anxious occupations. The few moments, which I have been able to spare from the chamber of sickness, have been devoted to necessary judicial concerns.

You, too, have been placed in most trying circumstances, and have felt, what indeed has been often my lot, the dreadful horror of losing children in the very bloom and brightness of



youth. . . . How frail is the tenure of our happiness, and how little of our joys and sorrows is within our own control! For myself, I can truly say, that my personal experience has greatly tended

"To damp my brainless ardor, and abate  
That glare of life which sometimes blinds the wise."

These are melancholy reflections, and though they sometimes press on my anxious hours, I am glad to say that they have not robbed me of many cheerful days. . . .

Your affectionate friend,

JOSEPH STORY.

TO HON. NATHANIEL WILLIAMS.

Salem, December 3d, 1815.

MY DEAR FRIEND:

Since I wrote you last, I have undergone great and severe anxieties, and have sustained what I must ever deem an irreparable loss. My dear little boy, after suffering in a most melancholy manner from a gradual decline, died towards the close of October. It was my painful duty to attend him almost exclusively during the last months of his illness, and what with almost incessant watchfulness, anxiety, and sorrow, my very soul sank within me. It is impossible to describe to you, or to any other human being, who has not passed through such a bitter scene, how much I loved him, and how much his death has worn upon my feelings. I loved him indeed for what he was, a most intelligent and promising boy; I loved him more because he was the anchor of all my future hopes; but I loved him most because *he* loved *me* most dearly; never could a child cling more fondly to a parent. But I forbear to trouble you with these useless and melancholy details; I bear the loss as well as I may; I fly to business to stifle my recollections of the past, and I find, what I have always believed, that employment is the

only relief under the severe losses of human life. It has fortunately happened, that the session of the Circuit Court has compelled me to more than usual labor. My mind has been occupied, and I have been obliged to run away from the indulgence of grief.

Human happiness is held by so feeble a tenure, that we should not add to our sorrows, by treasuring them up for solitary musings. We shall have as many griefs as we can well struggle under, without looking backward on the past. I feel myself bound, therefore, by my duties to my yet remaining family, a wife and daughter, to shake off the gloom, and to press into the hurry of business, where I may gather smiles from those who in the sunshine can amuse and instruct us. But never, never, my dear friend, can the wound in my soul be healed; I shall carry to the grave the memory of my dear boy, whom I fondly doted on. I am again forgetting my purpose, and leading you into a path in which I am not willing to travel. . . .

Adieu, my dear friend, I am as ever,

Yours, affectionately,

JOSEPH STORY.

The domestic sorrows of this period of his life gave a tinge of sadness to his meditations, which showed itself in the verses he wrote in later days, and although they had not the power permanently to depress his natural light-heartedness, they chastened his enthusiasm and sobered his imagination. The loss of his children afflicted him very deeply, and the first burst of his grief completely overwhelmed him. The memory of these days was always a pain, and he could never bear any allusions to the children he had lost.

But as these letters indicate, he did not surrender himself to despondency or to vain lamentations over what

was irretrievable. Cheerfulness he cultivated as a duty. It was his creed that we should keep our mind serene, bear up against misfortunes, avoid repinings, and look upon the sunny side of things. Early in life he read in the *Spectator* a series of essays on this subject by Addison, which made a deep impression upon him, and thenceforward he saw it "writ down in his duty," to dwell upon the compensations of every disappointment, and to preserve, as far as possible, an equable and enjoying spirit. Moments of gloom and despondency fall to the lot of all, especially of the sensitive, and

"There is often found  
In mournful thoughts, and always may be found,  
A power to virtue friendly ;"

but such moments and thoughts are for seclusion, not for society. He was not without his sorrows. But he strove to keep them to himself, so as not to overshadow with them the happiness of others. Even in solitude and meditation he studied to banish moroseness and melancholy from his thoughts, not only as being injurious but unchristian. At once cheerful by temperament and by principle, he sought not only to do his duty, but to enjoy doing it, and to accept life as a favor granted, and not a penalty imposed. Happy, indeed, is he

"That can translate the stubbornness of fortune  
Into so quiet and so sweet a style."

Henceforward, he was compelled annually to absent himself from his family during the three winter months, in order to attend the sessions of the Supreme Court at Washington. The change of scene, the vivacity of poli-



tical action and intrigue, and the many distinguished men he met, gave a new turn to his thoughts and habits, and rendered his temporary residence there in many respects interesting. But he would gladly have surrendered all the attractions of Washington, for those quiet fireside enjoyments of home, which he prized so much more highly. Still, it is probable that the exchange of the stern New England winter, for a warmer and more equable climate, together with the double journey, and the excitements of new objects and persons, had a beneficial influence on his health, prolonged his life, and on the whole promoted his happiness.

During the succeeding years, he devoted himself to judicial duties with great assiduity, and took his full share in the labors of the Court at Washington. The most prominent and elaborate opinion delivered by him at this time in the Supreme Court was upon a question of Real Law, arising in the case of *Green v. Litter*, (8 Cranch's R. 249.) The principal point decided in this case is, that whenever there exists a union of title and seizin in deed, either by actual entry and livery of seizin, or by intendment of law, as by conveyance under the Statute of Uses, the *esplees* are knit to the title, so as to enable the party to maintain a writ of right. The judgment displays complete familiarity with the technical learning of Real Law, and is one of his prominent labors in that department.

The following letter, which refers to this opinion, shows the confidence he had acquired among his brother Judges, and the fact illustrated throughout his life, that where there was work to be done, he was always ready to do it:—

TO SAMUEL P. P. FAY, ESQ.

Salem, April 24th, 1814.

MY DEAR FAY :

. . . I meant to have written you from Washington, and I ought to have so done; in truth I have no apology, for I often thought of it, and yet postponed it. By way of mitigation of damages, however, I will state to you that I was quite ill during the whole visit at Washington; my old complaint fastened upon me with the most pertinacious obstinacy, and is hardly yet entirely subdued. Added to this trouble, we had a most laborious session. We were stuffed with all sorts of complicated questions, particularly of Prize Law, in respect to which I was obliged to take a decided part. As usual, the old maxim was verified,—*Juniores ad labores*. I worked very hard, and my brethren were so kind as to place confidence in my researches. Perhaps you would not readily expect to find at Washington any questions as to real actions; but for your comfort I will tell you that I delivered the unanimous opinion of the Court in a case of a writ of right, which involved more various questions as to the forms of pleading than we usually combine in a dozen suits. There were eleven distinct questions submitted for decision. When we meet I have a good many things to say to you as to decisions, and lawyers, and judges. One has a deal of comfort in unbosoming to an old friend all the peeps behind the curtain that chance or office occasionally give him. I shall rejoice to tell you all I know and think and feel as to these topics, for I can scarcely breathe free with more than two or three persons in this wide world. . . .

I am, affectionately, your friend,

JOSEPH STORY.

The volume of Reports alluded to in the following letter, is that published by Mr. Gallison in May, 1815,



containing the judgments of my father during his Circuits in the years 1812 and 1813. Of these, only four were reversed by the Supreme Court. The leading cases contained in it, are: "The Rapid," "The Grotius," "The Julia," "The Alligator," and "U. S. v. Wonson," all involving questions in Admiralty and Prize Law, as indeed do nearly all the cases in the volume.

TO HON. NATHANIEL WILLIAMS.

Salem, September 8th, 1815.

MY DEAR FRIEND:

. . . I am very glad to receive your approbation of our reports. It is so very difficult to know the real value of our own labors, that I have felt considerable apprehension that the decisions would not be deemed very important, interesting, or correct. And I am well aware that very little allowance is made for the necessary haste with which opinions are obliged to be prepared and delivered. I perceive already many careless expressions in the composition, which might have been easily amended, and given as a more exact and graceful statement of my opinions. However, there is no end of difficulties of this sort, and I am obliged to console myself with the sentiment expressed by Pope, —

"Content, if here the unlearn'd their faults may view,  
The learn'd reflect on what before they knew."

If the public approbation should so far follow the work as to bear the expense of a second volume, it will be published, embracing the cases of 1814 and 1815. These cases are much more important, various, and deliberate than those already published, and the questions are such as would, in general, be as useful in other States, as in those in which the decisions were made. There is also some curious learning



involved in some of them. Do you think that a publisher could safely calculate on a sale of twenty copies at Baltimore?

I have now before me a vastly important question. A libel has been filed in the District Court on a policy of insurance, and the question is, whether it is a "case of Admiralty and Maritime Jurisdiction," within the Constitution. I have examined the subject with great diligence, and shall deliver an opinion next month at Boston, in all probability. The opinion will not be short of seventy pages, as the materials are great, and the learning spread over a wide surface. Give my best respects to your wife, and believe me as ever

Affectionately, yours,

JOSEPH STORY.

The Insurance case alluded to in this letter, was *De Lovio v. Boit*, (2 Gallison's R. 398) one of the earliest, and perhaps the most elaborate opinion ever delivered by my father. It is a learned and luminous dissertation on the history, growth, and extent of the Admiralty Jurisdiction, which, with masterly power, it explores to its fountain heads in the antiquities of English history and law; tracing it from the Laws of Oleron, compiled by Richard on his return from the Holy Land, and the Black Book of the Admiralty, through the statutes and ordinances of subsequent kings, the jealous commentaries and decisions of Lord Coke, and the broader expositions of Lord Hale, down to the time when it was pronounced.

The main question opened by this case was as to the interpretation of the clause in the Federal Constitution, by which "Admiralty and Maritime Jurisdiction" is given to the Courts of the United States. In the judgment it is maintained, that the Admiralty originally embraced

within its jurisdiction all civil and criminal causes arising within tide waters, whether in ports and havens, or on the high seas; and that the subsequent Statutes of Richard and Henry were entirely consistent with such a jurisdiction, their technical interpretation by Lord Coke being at variance with their language and objects, injurious to public convenience, and to be rejected in favor of the broader doctrines of the great civilians. It is also claimed, that the Colonial Courts of Admiralty, in America, acting under a charter previous to the Revolution, had exercised an authority much more extensive than that, which obtained in England at the same time, and that their powers, corresponding as they did to the general principles recognized by the commercial nations of Europe, furnished the true key to the clause of the Constitution. Otherwise, as it was argued with great force, the term "Maritime," which is studiously used in this clause, as well as in the Judiciary act passed in furtherance of it, would be deprived of all force.

In the course of this judgment all the precedents of the English law are carefully collated, criticized, and tested by the broad principles of the Continental jurisprudence, and it is not too much to say, that it constitutes the fullest and most learned treatise on the subject of the Admiralty jurisdiction in the language. Overflowing as it does all the encroachments of the common law, and claiming for the Admiralty its wide, original authority, it has not wanted opposition from some whose prejudices coincided with those of Lord Coke. But it has maintained itself against all attacks. If, in the words of one of its opponents, it "sucked up jurisdiction like a sponge," no one has yet squeezed out



of it what it sucked up. It has received the full approbation of most accomplished and learned minds, and may be now said to be generally recognized as laying out the true boundaries of the Admiralty jurisdiction. The Supreme Court of the United States, in the two late cases of *Waring v. Clarke* (5 Howard, R. 459) and *New Jersey Steam Navigation Co. v. The Merchants Bank*, (6 Howard, R. 344,) has sustained its doctrines.<sup>1</sup> In the Circuit Court, it has been approved by Mr. Justice Washington, in the cases of *Wilmer v. The Smilax*, and *Davis v. The Brig Seneca*, (12 American Jurist, 489,) and by Mr. Justice Thompson, in *The Sloop Mary*, (1 Paine, R. 673;) and although Mr. Justice Baldwin dissents from it in *Bains v. The Schooner James and Catherine*, (1 Baldwin, R. 544,) its views are understood to have been concurred in by Mr. Chief Justice Marshall.<sup>2</sup> The Court of Appeals, in Kentucky, have recognized it as authoritative in *Case v. Wooley*, (6 Dana, R. 21.) In the District Court of Maine, it has been upheld by Judge Ware, in *Steele v. Thatcher*, and *Drinkwater v. The Brig Spartan*, (Ware, R. 91, 149,) and in a late very able note to *The Huntress*, (Daveis, R. 93,) in which this learned judge reviews the whole question with his usual clearness and accuracy. My father himself repeatedly reaffirmed the same doctrines, and as late as the year 1843, he says of it, in his judgment pronounced in the case of *Hale v. The Washington Ins. Co.* (2 Story, R. 176):—

“Nearly twenty years have elapsed since, in the case of

<sup>1</sup> See also *Peyroux v. Howard*, 7 Peters, R. 324; *United States v. Coombs*, 12 Peters, R. 72; *United States v. La Vengeance*, 3 Dallas, 297; *The Samuel*, 1 Wheat. R. 9; *The Octavia*, 1 Wheat. R. 20.

<sup>2</sup> See *The Huntress*, Daveis, R. 104, note.



De Lovio *v.* Boit, I had occasion to consider and affirm the jurisdiction of the District Courts of the United States, as Courts of Admiralty, over policies of insurance. I have not unfrequently been called upon in the intermediate period to reëxamine the same subject. I now wish to state that I deliberately adhere to the doctrine therein stated. Indeed, in the various discussions, which have since taken place here and elsewhere, I have found nothing to retract and nothing to qualify in that opinion, in respect to the true nature and extent of that jurisdiction and its importance to the commercial and maritime world. To no nation is it of more importance and value to have it preserved in its full vigor and activity than to America, as one of the best protections of its maritime interests and enterprises. I rejoice to find, also, that, by a recent act of Parliament, (Stat. 3 and 4 Victoria, ch. 65; 3 Haggard, Adm. R. Appendix, p. 436, n.) the Admiralty in England has been restored to many of its powers and privileges and much of the jurisdiction which it anciently maintained, and which has been studiously withdrawn from it for the two last centuries by the ill-considered prohibitions of the common law."<sup>1</sup>

The following letters relate particularly to this opinion.

TO HENRY WHEATON, ESQ.

Salem, September 5th, 1815.

MY DEAR SIR:

I have the pleasure to acknowledge your favor of the 2nd instant. As yet I have not seen your Digest on the Maritime Law, nor did I know it was published until within a few days, when I saw it announced for sale in the Philadelphia papers. I shall avail myself of the earliest opportunity

<sup>1</sup> See also *Plummer v. Webb*, 4 Mason, R. 380; *The Jerusalem*, 2 Gall. R. 348; *The Schooner Tilton*, 5 Mason, R. 465; *Andrews v. The Fire and Marine Ins. Co.* 3 Mason, R. 6; *The Schooner Volunteer and Cargo*, 1 Sumner, R. 551.

of perusing it. That I shall derive great pleasure and instruction from it, I cannot for a moment doubt, and I shall endeavor to promote its circulation among us. Nothing could be more welcome to me, and, as I think, to the profession also, than a treatise upon the jurisdiction, law, and practice of the Instance Court. There is a most shameful ignorance now on the subject, and it occasions considerable embarrassment in practice. A few cases only have as yet arisen in the Instance Court in my Circuit, but as they arise, I shall from time to time endeavor to fix the principle and practice by a general adherence to the Admiralty rules. Already, in the Circuit Court in this Circuit, I have held that all maritime contracts are within the admiralty jurisdiction. There is now pending in the District Court a libel on a policy of insurance, as a maritime contract, and it will come to the Circuit Court on a plea to the jurisdiction. I shall deliver on this occasion a very elaborate opinion upon the whole Admiralty jurisdiction as well over torts as contracts, and shall review all the common law decisions on this subject, and examine the original rights of the Admiralty before and since the Statutes of Richard II. I have, indeed, now by me a manuscript dissertation on this subject nearly finished, which will probably be incorporated in the opinion.

If any of my manuscripts or opinions can be of the least service to you, you are entirely welcome to them. I do very sincerely hope that you will undertake the task of giving us a treatise on the subject. The outline of Brown in his Admiralty Lectures will afford a very good foundation, but it is so incomplete that much may be done to invite the public patronage. I have Godolphin, Zouch, Exton, and Spelman on the Admiralty Jurisdiction. They are principally controversial as to the question of Jurisdiction. Brown's Admiralty and Clerke's Praxis (which has been translated by Hall, but I have the original) are the best on points of practice, and occasional lights may be derived from the other works. I will, with pleasure, abstract for you all the points of

practice glanced at in Zouch, Exton, Godolphin, and Spelman. Roughton's articles (annexed to Clerke's Praxis) will give you an ample view of the criminal jurisdiction of the Admiralty. You may make your treatise very large or very concise, as you please, for the materials are ample. If you should conclude to treat upon the various subjects of maritime law, cognizable in the Admiralty, such as Contributions, Hypothecations, Mariners' Wages, Freights, &c., you would embrace a large field.

You cannot but observe, that although Brown feels himself compelled to adopt the common law doctrine as to admiralty jurisdiction, he everywhere complains of its injustice. In the United States, the Constitution has given to the Courts of the United States cognizance of "all causes of admiralty and maritime jurisdiction," which I hope to show includes all causes *originally* within the admiralty jurisdiction, unfettered by the Statutes of Richard, and that they are,—all maritime contracts wherever made, and all torts and injuries on the high seas or in ports within the ebb and flow of the tide. If my opinion should ultimately be overruled, still your treatise would be valuable, as containing the law and practice *in rem* and *in personam*, so far as the jurisdiction does extend.

I have not been so fortunate as to see Sir Leoline Jenkins's works. Could they be procured at New York?

As to our Reports, I feel a solicitude that a sufficient number may sell to indemnify for the expense of publication, and enable the Reporter to put to press a second volume. The decisions of 1814 and 1815 embrace an unusual number of very important cases on Prize Law and Maritime Law, and also on some interesting branches of Constitutional and Land Law. Unless the first volume succeeds, they cannot be published, and as no bookseller has any interest in the work, I have had my fears that the circulation would be so narrow as to forbid the risking of another. If sixty or eighty copies could be disposed of at New York, the patronage would be



deemed adequate. I have requested Mr. Gallison to send Judge Livingston that number.

You are aware that in the *Nereide*, before the Supreme Court last winter, I differed from that Court. Since my return I have drawn up my opinion in a very full manner, and shall hand it to Mr. Cranch. I remain entirely satisfied that the judgment of the Court cannot be sustained upon principle. I should not, however, have said a word on this subject if it had not been to express through you to Judge Van Ness my high commendation of the opinion delivered by him in the same case. I wish to see it in print, as I think it unanswerable in argument and highly creditable to his talents. Cannot you persuade Judge Van Ness to give it to the public?

I have thus written you, my dear sir, in great hurry. Be assured that nothing will be more grateful to me than to assist your literary and professional pursuits in any way in my power. Why could not some enterprising bookseller be induced to publish a translation of Pothier and Emerigon on Insurance; of Pothier on Maritime Laws and Mariners' wages; of Huberus *De Conflictu Legum*; of the *Consolato del Mare*? This last would be much wanted, and I understand Mr. Hall, of Baltimore, has a translation prepared for the press. If you come to Rhode Island this summer, pray let me have the pleasure of seeing you.

With the highest respect,

I am your obliged friend,

JOSEPH STORY.

TO HON. NATHANIEL WILLIAMS.

Salem, December 3d, 1815.

MY DEAR FRIEND:

. . . The opinion which I delivered in the case of the jurisdiction of the Admiralty over policies of insurance,

is the most elaborate opinion I ever composed. It is a systematic review and examination of the history of the law on this subject, and embraces a complete digest of all the cases at Common Law and in the Admiralty. I think that it would not occupy less than eighty pages in print. I never pronounced an opinion in which I was more entirely satisfied. It will be very easy to overrule my doctrines, but it will not be quite so easy to refute them; for whether right or wrong, it will require a very laborious examination of authorities, to understand the whole stress of the points. I devoted all my leisure time for more than a month to the subject.

To my surprise, I have understood that the opinion is rather popular among merchants. They declare that in mercantile causes, they are not fond of juries; and in particular, the underwriters in Boston have expressed great satisfaction at the decision. Unfortunately, the cause will not go to the Supreme Court; the parties cannot agree to carry it thither.

Affectionately, yours,

JOSEPH STORY.

The following letter indicates his first action in respect to the establishment of a bankrupt law, a subject in which he became afterwards warmly interested.

TO HENRY WHEATON, ESQ.

Salem, December 13th, 1815.

MY DEAR SIR:

I was much pleased, on reading in a newspaper this morning, that you had published an essay on the necessity of a navigation act; most cordially do I subscribe to your opinion on this subject. I am truly rejoiced that there are found public spirited young men, who are willing to devote their time and talents to the establishment of a great national



policy on all subjects. I hope you will follow up the blow by vindicating the necessity of establishing other great national institutions; the extension of the jurisdiction of the Courts of the United States over the whole extent contemplated in the Constitution; the appointment of national notaries public, and national justices of the peace; national port wardens and pilots for all the ports of the United States; a national bank, and national bankrupt laws. I have meditated much on all these subjects, and have the details in a considerable degree arranged in my mind. And once for all, I most sincerely hope that a national newspaper may be established at Washington, which for its talents and taste shall entitle itself to the respect of the nation, and preserve the dignity of the Government. In what a strange situation are we now in this respect at the capital of the United States! . . .

You may recollect, that you gave me last winter a printed copy of a bankrupt act then before Congress, and which you had endeavored to procure to be enacted. I have lately examined the whole bill with considerable attention; and have also looked at the cases in the United States, in which the construction of the old bankrupt act has come in question, and also to the late act (46 Geo. III.) and the late decisions in England. It has occurred to me that from these sources, some beneficial amendments and additions might be incorporated into your bill. I have minuted some of these on the margin of the bill which you gave me; and if it is proposed to bring the subject before Congress again at this session, and you think my remarks may be of any service, I will proceed to throw them into regular shape, and transmit them to you, or any other person, as you shall choose. I do this *pro bono publico*, and with a view to correct some few of the errors of the old bankrupt law, and also to prevent the law from being as inefficacious as the general slovenliness of our *present* legislation leads us to anticipate. I beg, however, to



add, that your bankrupt bill is not liable to this imputation, and I fear it is already too good to pass.

With the highest respect and esteem,

I am, dear sir, your friend,

JOSEPH STORY.

It may be as well to say, in this place, that my father, in the year 1816, drew another bankrupt act, more in conformity with his views, which formed the basis of the bankrupt act of 1827. Neither, however, was passed by Congress.

The next letter shows his scrupulousness and exactness, in all matters relating to his judicial opinions.

TO HENRY WHEATON, ESQ.

Salem, August 31st, 1816.

MY DEAR SIR:

Among the cases from which I dissented at the last term, I am particularly desirous of recording in your reports my dissent in that of the Mutual Assurance Society *v.* Taylor. I believe you did not put it down at the time; and it will be well if you should now add, "Livingston and Story, Justices, dissented." I am the more solicitous on this subject, as that decision in the judgment of Mr. Justice Livingston and myself, involved some very important doctrines, which might operate injuriously upon other causes. . . .

Believe me, very truly and respectfully,

Your obliged friend,

JOSEPH STORY.

My father's devotion to his judicial duties, and to all those studies by which these could be enlightened, was constant and intense. He shrank from no labor, and left no field unexplored, from which he could glean in-

struction. But he was not merely a Judge; he was a Jurist also,—interested, not only in the administration of the law, but in its science, in its improvement by legislation, and in its exposition by published works. His career as a teacher had not yet opened upon him. But the following letter, in answer to a suggestion that he should deliver a course of Law Lectures in Boston, shows even at this early time a readiness for such service, and first foreshadows his future professorial life.

TO CHARLES P. SUMNER, ESQ.

Salem, June 30th, 1815.

MY DEAR SIR:

Your late letter was very welcome to me. The more so, because it came from a friend whom I had long known, and therefore could more fully appreciate the value and kindness of his remarks. I will not profess to be insensible to your flattering commendations. They very far exceed my deserts, and I can only regret that I am not more worthy of them.

I should have no objection to delivering a course of law lectures in the manner which you suggest. In truth, since our conversation, I had turned the subject several times in my mind; and it was the more agreeable to me, as it would just about fill up the leisure time which I now allot to general reading of the law.

Judge Davis, however, on my last visit at Boston, expressed an opinion, that public law lectures would be delivered at Cambridge, in the course of a year; and that the government had it now in contemplation. Under these circumstances, I should feel it somewhat awkward to announce a determination to pursue a like course; and perhaps it will be best to await the decision of the college.

At all times, be assured that I shall be happy to see you and to converse with you. I have lived long enough in the world to learn, that few friendships are really useful and sin-

gere which are not formed in early youth ; and as I advance along the path of life, I look more anxiously to preserve my old attachments than to acquire new ones. I shall always remember the kind notice with which you honored me at college. With unfeigned esteem, I am, Dear Sir,

Your obliged friend,

JOSEPH STORY.



## CHAPTER IX.

### JUDICIAL LIFE.

CASE OF MARTIN *v.* HUNTER'S LESSEE — HIS FIRST CONSTITUTIONAL JUDGMENT — HIS VIEWS OF THE CONSTITUTION OF THE UNITED STATES — MR. PINKNEY OFFERS TO YIELD HIS PRACTICE AT BALTIMORE TO HIM — ATTEMPT TO RAISE THE SALARIES OF THE JUDGES OF THE SUPREME COURT — SKETCH OF HON. SAMUEL DEXTER — WRITES ELABORATE NOTES "ON THE PRINCIPLES AND PRACTICE OF PRIZE COURTS," "ON CHARITABLE BEQUESTS," "ON THE PATENT LAWS," FOR MR. WHEATON — LETTERS RELATING THERETO — HIS GENEROSITY IN LABORING FOR OTHERS — LETTER ON MR. WHEATON'S NOTE "ON THE RULE OF 1756" — PREPARES A LARGE PORTION OF A DIGEST FOR MR. WHEATON — WRITES A "JUDICIARY ACT" AND A LONG ARGUMENTATIVE COMMENT THEREON FOR A FRIEND — HIS VIEWS AS TO THE RAISING OF THE SALARIES OF THE JUDGES OF THE SUPREME COURT OF THE UNITED STATES — LETTER ON HIS NOTE "ON THE PATENT LAWS" — CASE OF UNITED STATES *v.* BEVANS — LIST OF NOTES TO WHEATON'S REPORTS, WRITTEN BY HIM.

IN the year 1816, my father pronounced the judgment of the Supreme Court at Washington, in the case of *Martin v. Hunter's Lessee*. It discusses in the most ample manner the extent of the appellate jurisdiction conferred on the Supreme Court of the United States by the Constitution, and affirms its power to overrule the decisions of the State tribunals, as well as of the tribunals of the United States, on questions of constitutional law. Its clearness and solidity of argumentation, as well as the wide and comprehensive views of government it con-

tains, render it one of the most prominent constitutional opinions ever delivered by the Court, and would fairly entitle my father, even if it stood alone, to high consideration as a constitutional lawyer. It has all the peculiar merits of the best judgments of Marshall,—compactness of fibre and closeness of logic. It develops the relation of the States to the Federal Government, and establishes that although their sovereign authority is only impaired so far as it is ceded, yet that the Constitution does not operate to create a mere confederation and aggregation of separate sovereignties, but contains in itself paramount and supreme powers surrendered by the States and the people for the common and equal benefit of all over whom this government extends,—and that among the powers thus ceded, is the appellate jurisdiction of the Supreme Court of the United States over all cases enumerated in the clause vesting the judicial power.

This was the first great constitutional judgment delivered by my father. To this department of the law, he had given little study during his practice at the bar, and although he had always avowed himself to be a “disciple of Washington,” yet as the views of the party to which he belonged were widely different from those entertained by the illustrious Chief Justice Marshall, no small curiosity was felt by his friends as to the determination his mind should take in great constitutional questions. The Republicans were strict constructionists of the Constitution, narrowing down the powers of the Federal Government to the express and exact terms of that instrument, while the Federalists claimed a broader and more liberal exposition in favor of the United States. The opposition



between these parties was the struggle of State sovereignty against Federal sovereignty. Upon taking his seat on the Bench, my father devoted himself to this branch of the law, and the result was a cordial adherence to the views of Marshall, whom he considered then and ever afterwards as the expounder of the true principles of the Constitution. Nor did this indicate so much a *change* as a *formation* of opinion, and it is no slight indication of his independence and emancipation from the influence of party, that he resigned, upon careful study and examination into the history and principles of the Constitution, his early prejudices in favor of Mr. Jefferson's abstractions, for the clear and practical doctrines of Marshall. In the case of *Martin v. Hunter's Lessees*, he first judicially stated his constitutional views, claiming an enlarged and liberal construction in favor of the Federal Government; and as these doctrines were at all points opposed to those of Mr. Jefferson and the Republicans, he was exposed to the accusation of being a renegade of party. This neither troubled nor influenced him. He was satisfied that in deciding as he did, he acted upon the calmest and sincerest conclusions of his judgment. That consistency, which trembles at its own shadow, and is dogged by the restless ghost of its former self, is a bugbear to frighten the weak. He looked upon it with contempt. His was the consistency to truth—to the living thought of the present, not to the dead opinion of the past.

During the year 1816, Mr. Pinkney was appointed Minister Plenipotentiary to the Court of Russia, and consequently forced to abandon his position at the Bar. Having become personally intimate with my father, he



earnestly urged him to resign his seat upon the Bench, remove to Baltimore, and assume the whole of his ample and lucrative practice. This offer forms the matter of the following letter.

TO STEPHEN WHITE, ESQ.

Washington, February 26th, 1816.

DEAR STEPHEN :

. . . Mr. Pinkney has stated to me confidentially, that he has been applied to by the Government to go as Minister to Russia ; but as he has not yet given in his answer, the whole subject is now in profound secrecy. I have no doubt that he will accept. He has solemnly proposed to me, in case he accepts the appointment, that I should resign my office on the Bench, and remove immediately to Baltimore, and engage in the practice of the law. He promises to give me the whole of his business, and to introduce and support me exclusively among his friends. He states that his profits are now twenty-one thousand dollars per annum, and that I may safely calculate on ten thousand dollars per annum. He is the retained counsel of all the Insurance Companies at Baltimore, and will immediately place me in his situation with regard to them. This proposal is highly flattering, and is made in the utmost sincerity, and pressed upon me in the most friendly manner. I have given no answer to it, and shall not finally decide until I return home. I wish, however, that you would give me your opinion on the subject, and consult William and Joseph. It is important that the whole subject should be kept an entire secret, as I am pledged to Mr. Pinkney not to disclose it, so as to affect him or the Government. You know that I am poor, and that an acquisition of property would be highly grateful to me. On the other hand, it is a new adventure, and a quitting of all my old friends and family, and starting anew into professional life. I confess, that I almost regret that so tempting an offer has been made,

as I fear that I shall not so decide as my judgment may ultimately approve. Pray, therefore, assist me with your good counsel. I have written to my wife on the subject, and should like that you should converse with her frankly, if you have a good opportunity. I repeat again that I am persuaded Mr. Pinkney will accept the offer of the Government.

Your affectionate friend and brother,

JOSEPH STORY.

This tempting offer he concluded to decline, preferring to devote his life to the labors of the Bench, with the small salary of \$3,500, to accepting the best business of the bar at Baltimore with an annual income of probably \$20,000. The motives which induced this decision were a preference of the functions of a Judge to those of an advocate. His ambition reached after the solid fame resting upon judicial exposition, rather than the more brilliant and ephemeral reputation to be won by contests at the Bar, and for this he was willing to sacrifice affluence.

An unsuccessful attempt was made at this time to raise the salaries of the Judges of the Supreme Court, and it is to this that the following letter refers:—

TO HON. NATHANIEL WILLIAMS.

Salem, May 22d, 1816.

MY DEAR FRIEND:

. . . Before receiving your letter, I had determined to decline going to Baltimore, and, notwithstanding the meanness of Congress, to remain on the Bench. I am ashamed of Maryland, for adding her vote to the disgraceful abandonment of the Judges. Mr. Harper was absent, but Mr. Goldsborough voted, as I understand, against us. I wish most sincerely that you would go to Congress, for I

love to see liberal and correct men there; but in a professional view you do well to decline. The station would probably injure your law business very materially. It is very difficult to recover from the losses of a six months' absence every year. . . .

I have sent you a sketch of Mr. Dexter's life, which I delivered to the grand jury. It was written in great haste, and I regret that I had no opportunity to polish it. Such as it is, however, I have delivered it to the world, and I am proud to say that all that I have written, I believe. I have always considered him second only to our inimitable friend Mr. Pinkney. I hope it will be many years before *he* will need a biographer; but I think his life should be written by a master, and I know not where such a person could be found. In the phrase of a painter, I would say, Mr. Pinkney's character and mind would be a great study.

Give our best love to your wife, and let Joe, and Caroline, and Victoria, (whom, by the by, I admire for her name,) know that I can play at marbles as well as when I was at Baltimore.

I am, as ever, your affectionate friend,

JOSEPH STORY.

The sketch of the character of Hon. Samuel Dexter, alluded to in this letter, formed the concluding part of a charge delivered to the grand jury of the Circuit Court, holden at Boston in May, 1816. It was published at the request of the Grand Jury and the members of the Bar, and was afterwards reprinted in a volume containing a collection of some of the miscellaneous works of my father.

The following letter refers to the elaborate note "on the Practice of Prize Courts," written by my father and printed in the appendix to the first volume of Wheaton's Reports. The memorial alluded to in the first letter, was



addressed by the inhabitants of Salem to the President and Congress of the United States, in January, 1806, upon the infringement of the neutral trade of this country.

TO HENRY WHEATON, ESQ.

Salem, May 25th, 1816.

MY DEAR SIR:

I intend to furnish you with notes on the Practice of the Prize Courts at the first hearing of the cause, upon the manner and the circumstances of delivery on bail, and on the nature of farther proof, and circumstances under which it is allowed. These are peculiarly important to rescue the practice of the prize tribunals in the Southern States from the most mischievous irregularity. I shall probably add some other notes, but I cannot now exactly define them. . . .

The limitation upon the right of a domiciled citizen to carry on commerce, to which you have alluded, you will find in *The Neptunus*, (6 Robinson,) under page 408. The clause as to memorandum articles in our policies has nothing correspondent in any foreign code to my knowledge. I shall transmit you by this mail the Salem memorial which was written altogether by me. . . .

Respecting the publication of the Reports, which we most ardently and impartially desire, I will converse with you when we meet. I am fearful that at present there is not a bookseller in Boston who is able to print them, or give any thing for the copyright. I can readily enough procure you subscribers. . . .

By the by, I have written Mr. Pinkney on the subject of his mission. I have determined not to resign my seat on the Bench. I have urged him to finish the *Nereide* before he goes; but I fear it will be left untouched. Truly have you said, that nobody is left to adorn the Bar since Dexter and Pinkney have left it, at all comparable to either.

There have been but very few interesting causes before me on the Circuit, and probably there will not be more than a half dozen this spring worth reporting.

But upon all these, and a thousand other topics, I must defer saying any more until I meet you. At this moment I am exceedingly hurried by pressing avocations.

I am, my dear sir, your obliged and affectionate friend,

JOSEPH STORY.

The promised note was sent at a later date, with this letter:—

TO HENRY WHEATON, ESQ.

Salem, July 28th, 1816.

MY DEAR SIR:

I transmit you enclosed the note which I promised on the Practice of the Prize Courts. It would have been much more complete if I had had more leisure. But my engagements since my return have occupied nearly all my time. I hope, however, that what I have written may be useful to you, and you can enlarge the sketch as far as you think expedient. . . .

Believe me, very truly, your obliged friend,

JOSEPH STORY.

Not only the note spoken of in the preceding letters, but also the "additional note on the Principles and Practice in Prize Courts," in the appendix to the second volume of Wheaton's Reports, the elaborate notes "on the Patent Laws" in the appendix to the third volume; "on Charitable Bequests," in the appendix of the fourth volume; "on Piracies," and on "the Admiralty Jurisdiction" in the fifth volume, (p. 103-162;) as well as several other notes of less importance, all of which occupy no less than one hundred and eighty-four closely printed



pages, and have been so highly commended for their ability and learning, were written by my father.

The following entry in one of the memorandum-books of my father, contains an authentic list of these contributions down to a certain date, and shows the spirit in which they were furnished :

"June 12th, 1819. It is not my desire ever to be known as the author of any of the notes in Mr. Wheaton's Reports. Lest, however, the fact should transpire, and it should be supposed that he is under obligations to me for notes which are his own, I think it best to put down those notes which I have written. I made it an express condition, that the notes furnished by me should pass as his own, and I know full well, that there is nothing in any of them which he could not have prepared with a very little exertion of his own diligence and learning.

"The notes I allude to are as follows:—In the first volume (p. 494) the note on the Practice in Prize Causes. In the second volume, the notes to *Craig v. Duvall*, p. 56 (a); *Id.* p. 60; *Id.* p. 62 (c); to *Liter v. Green*, p. 311 (a). In the Appendix, the additional note on Prize Practice and Principles. In the third volume, the notes to *Lanusse v. Barker*, p. 148 (a); *Robinson v. Campbell*, p. 224 (a). In the Appendix, note 2, on the Patent Laws. In the fourth volume, the note in the Appendix, on the Law of Charitable Uses. In the fifth volume, the note on Piracies, under p. 163, &c.

"The note in 5th Wheaton's R. 103, on the Admiralty Jurisdiction in cases of Crimes, is extracted principally, if not altogether, from a manuscript opinion of mine drawn up in *Bevens's* case, but never delivered."

The death of my father and Mr. Wheaton has removed any personal reason for the concealment of the authorship of these notes, which may have existed at the time



when this memorandum was made. I therefore venture to place upon record facts which have already become known to many persons and been partially announced to the public, and which are so beautifully illustrative of his character, that the truth of biography demands that they should not be suppressed.

This is one instance out of many in which my father freely gave his learning and labor, where it has remained unknown save to the person to whom it was given and to a few intimate friends. The lavish generosity with which he imparted all that he knew, yielding to others the hard-won products of his own severe thought and research, to strengthen the fabric of their fame, was a beautiful trait of his nature. There are few who like him will toil for others, and give their time to the interests of others, for no reward but that which springs from the gratification of their own generous impulses. There are few who do not love the reverberation of their own good acts. It is a rare and pure generosity, of a kind infrequent among literary men and scholars, for any one secretly to bind into the laurels of friends the best flowers of his cultivation, to enrich them with his choice thoughts, ideas, attainments, painfully drawn with hard labor from the mines of literature, science, or law. This is almost like giving away fame. But this was common with my father. He had no secretiveness, no selfishness.

"All his actions had the noble end,  
To advance desert, or grace some noble friend."

The wider knowledge and good ideas were spread the better, no matter how they obtained currency. Much of that which he did has not his name upon it. It was his

nature to give. He gave for the love of giving, not for the rewards. To have resisted this impulse would have made him unhappy. He never pricked the sides of his generosity with thoughts of duty. The stream leads not more naturally to the sea, than he yielded to generous impulses. What Ulysses says of Troilus was eminently true of my father:—

“ His hand and heart, both open and both free,  
For what he has he gives ; what thinks, he shows ;  
Yet gives he not till judgment guide his bounty,  
Nor dignifies an impure thought with breath.”

The following letters, addressed to Mr. Wheaton, which accord deserved praise to his able note on the Rule of 1756, printed in the Appendix to his first volume of Reports, will fully corroborate these remarks:—

TO HENRY WHEATON, ESQ.

Salem, September 15th, 1816.

MY DEAR SIR :

. . . As you intend annexing a note upon the Rule of 1756, it has occurred to me that it might be useful to draw your attention to some authorities and remarks of elementary writers, which perhaps have not fallen under your notice. At all events, I have ventured to collect a few, which have not been *usually* quoted in the controversy. I would advise also that your note should embrace a short history of the celebrated Orders in Council of 1793 and 1794, founded upon that rule, and also of the more famous orders of 1807. You may discuss with great advantage the latter orders upon principle, and also upon authority.

As to the Rule of 1756, consult Bevens and Rucker, (1 W. Black. R. 313,) where you will find an opinion of Lord Mans-

field very full to your purpose. Consult also Lord Loughborough's opinion in *Brymer v. Atkyns*, (1 H. Bl. 191,) who states something of the origin of the rule, as growing out of a construction of the Dutch Treaty. Consult also Lee on Captures, (second edition, 1803,) pp. 129, 130, 131; and in addition to the notes in 4 Rob. Appendix, Note A, and 6 Rob. Appendix, Note 1, the following notes: 6 Rob. 42, Note; 6 Rob. 74, Note; and 6 Rob. 252, Note; and Martens on Privateers, &c.

As to the illegality in general of prohibiting all trade with an enemy, consult Robinson's *Collectanea Maritima*, p. 158, Note; Ward on the Rights and Duties of Belligerents, &c., pp. 3, 4, 37, 39, 70, 76, 78; Lord Liverpool's (Jenkinson's) Letters on the Conduct of Great Britain in 1756, &c., pp. 24, 34. The French ordinance of 1704, appears to have been levelled as a retaliatory measure against the English and Dutch Regulations, on which Lord Liverpool and Mr. Ward animadvert with strong disapprobation. Consult also The Fox, &c., 1 Edwards, Adm. R. 311; *Anderson v. Anderson*, 1 Edwards, R. 380.

I have only referred to a few pages in Ward and Jenkinson, where the immediate point is touched, though you will find it necessary to examine the preceding and succeeding pages; and indeed the whole deserves a thorough perusal. In 2 Valin you will find the French ordinances, which have as little conformed to the law of nations as those of England.

If these hasty hints shall be of any use to you, I shall be gratified. If not, you may place them to the account of my zeal and interest in your welfare.

I am, with sentiments

of the highest respect,

Your obliged friend,

JOSEPH STORY.



TO HENRY WHEATON, ESQ.

Boston, October 18th, 1816.

MY DEAR SIR:

I have examined your note with as much attention as my other engagements would allow, and I do not perceive any thing material to be added. In a few instances I have ventured to mark with a pencil expressions which might be softened or erased. In a merely legal note, it is perhaps best to state the legal history of the rule, without any animadversions on its abuse or injustice; and probably in discussing it in this very *temperate manner*, it may have the influence which you must wish that it should.

My own private opinion certainly is, that the coasting trade of a nation, in its strict character, is so exclusively a national trade, that neutrals can never be permitted to engage in it during war, without being affected with the penalty of confiscation. The British have unjustly extended the doctrine to cases, where a neutral has traded between ports of the enemy, with a cargo taken in at a neutral country. I am as clearly satisfied that the colonial trade between the mother country and the colony, where that trade is thrown open merely in war, is liable in most instances to the same penalty. But the British have extended this doctrine to all intercourse with the colony, even from or to a neutral country, and herein it seems to me they have abused the rule. This at present appears to me to be the proper limits of the rule, as to the colonial and coasting trade; and the rule of 1756 (as it was at that time applied) seems to me well founded; but its late extension is reprehensible. However, if in this I at all differ from your opinion, I beg you not to alter your note, which I deem a very judicious and able exposition of the history of the rule. Your conclusion as to the illegality of the Orders in Council, I hope will remain unaltered, though it denounces those orders in strong and just terms. It is a very happy and beautiful paragraph, written in your best manner.

It has occurred to me that the beginning of your first paragraph might be somewhat varied with advantage, so as to present to uninformed readers, a more exact perception of the rule as you have expounded it. By way of example, I have ventured to sketch the following as a substitute for the parts of that paragraph between A and B :—

“ The rule commonly called the Rule of 1756, has acquired this denomination from its having been first judicially applied by the Courts of Prize in the war of that period. The French, then at war with Great Britain, finding the trade with their colonies almost entirely cut off by the maritime superiority of the British, relaxed their monopoly of that trade, and allowed the Dutch (who were then neutral) to carry on the trade between the mother country and her colonies, under special licenses or papers granted to Dutch ships for this special purpose, excluding at the same time all other neutrals from the same trade.

Many Dutch vessels so employed, together with their cargoes, were captured by the British cruisers, and were condemned by the Courts of Prize upon the just and true principles, that by such employment they were, in effect, incorporated into the French marine, having adopted the character and trade of the enemy, and identified themselves with their intents and purposes. They were, in the opinion of the Courts, to be considered like transports in the enemy's service, and liable therefore to capture and condemnation, upon the same ground as property, &c.”

If you should think that any alteration proposed by me is not as you wish, I beg you to lay it aside with the same freedom with which it is suggested. You will observe that in one place I have substituted the word “ unless ” for “ and.” This is to conform to what I understand the British doctrine to be. For upon the point of the continuity of the voyage, I understand the Courts to admit it to be completely broken by an incorporation of the cargo, with the general stock of trade in the neutral country.



I write you in great haste in Court, and you will therefore pardon my brevity and inaccuracies. If I had time I would give you at large my views on the colonial doctrines, as to the exact and reasonable *limit* of which I am not quite sure that I have as yet attained an entirely satisfactory opinion.

Believe me ever, your affectionate and obliged friend,

JOSEPH STORY.

TO HENRY WHEATON, ESQ.

Salem, January 8th, 1817.

MY DEAR SIR:

I received yesterday your obliging favor, accompanied with a copy of your Reports. I have read the whole volume through hastily, but *con amore*. I am extremely pleased with the execution of the work. The arguments are reported with brevity, force, and accuracy, and the notes have all your clever discriminations and pointed learning. They are truly a most valuable addition to the text, and at once illustrate and improve it. I particularly admire those notes which bring into view the Civil and Continental Law; a path as yet but little explored by our lawyers. They are full of excellent sense, and juridical acuteness. In my judgment, there is no more fair or honorable road to permanent fame, than by thus breathing over our municipal code the spirit of other ages.

Respecting the note on the Rule of 1756, I have already written my opinion; it is the best comment that the rule has ever received. The kind notice of our friend Dexter in the preface, is delightful to us all. And turning to the case of *Martin v. Hunter*, I perceive the splendid paragraph with which he closed a most excellent argument preserved in its original brightness. . . .

Believe me, very truly, your obliged and affectionate friend,

JOSEPH STORY.



The next letter gives striking testimony to my father's active sympathy in the labors of his friends, and the extraordinary generosity with which he gave away his services. Such offers as are contained in this letter show a living belief, that, "Life has no independent charms; in reciprocity consists all enjoyment."<sup>1</sup>

TO HENRY WHEATON, ESQ.

Salem, August 12th, 1818.

MY DEAR SIR:

I do not repent of my offer to assist you in making a Digest of the decisions of the Supreme Court. It is perfectly immaterial to me whether I work on a series of volumes or of titles. I have my fears that by taking titles something may be omitted by both of us under a supposition that the other will include it. On the other hand, I am aware that by working on volumes the whole must afterwards be recast in a uniform mould. There are difficulties both ways; and perhaps the one you propose is the least objectionable.

I am much pleased with Johnson's Digest, which I think a good model, but not to be followed servilely. Some of his titles more properly form part of a more general title; but in this respect every Digest must have some arbitrary divisions. The best way in my judgment is to dispose the matter under such heads as are most easily recollected and turned to in practice, and then by a distinct preliminary table, (as in Johnson,) to refer to them analytically. There is one title which I think is very important, and it is omitted in Johnson. It is a list of the cases which have been doubted, overruled, explained, or specially commented on. These should be collected and an explanatory letter should be added, as D. for doubted, O. for overruled, &c., with the case where the

<sup>1</sup> See *ante*, page 76.

doubt, &c., has been made. The head of Practice should be divided into Practice in Chancery, in Prize Causes, in Instance Causes and at Common Law. All these heads, except the last, which should stand by itself, may be put under the general heads, viz.: Chancery, Prize, Admiralty, after all the previous matter is exhausted. In respect to the title, Local Laws, I would divide it according to the alphabetical order of the States, and then subdivide the matter of each State into such heads as may be necessary. Among the States you can include what applies to the Territories and the District of Columbia.

At present I will agree to take the following heads:—

1. Admiralty, Instance Court; including in this, revenue causes, civil salvage, and admiralty instance practice; leaving every thing as to prize military salvage, and prize practice to you.

2. Bills of Exchange and Promissory Notes.

3. The Law of Shipping, including average, freight, charter parties, bills of lading, mariner's wages, &c. In short, every thing which Abbott treats of.

4. Insurance,—including bottomry, and all that Marshall treats of.

5. Real Actions, and all the law applicable to it.

6. Bankruptcy under the law of the United States.

7. Evidence,—including, witnesses, competency, &c.

8. United States, Constitutional Law, Powers of Courts, &c.

9. Statutes of the United States, construction of.

10. Devises and Legacies.

11. Alienage.

12. Foreign Laws, including the *Lex Loci*.

13. Pleas and Pleadings.

14. Practice in Courts of Common Law, leaving the Chancery and Prize Practice to you.

These heads will occupy all the leisure which I can command, and I believe will equal my original offer.



In digesting, I prefer the following as the general regulations:—

1. To follow, as near as may be, the manner of Comyns, in his Digest.

2. To state the points decided, as near as may be, in the very terms of the Court, and when necessary, to state the facts necessary to explain the points.

3. To state the incidental points and principles recognized by the Court in their judgments.

4. To state the principal point first in order, and then to follow up with the incidental points; and then add only queries thrown out by the Judges, or any important matter stated by any one of them, giving his name.

If any other or better suggestions occur to you, I will cheerfully follow them, as I only throw these out for consideration.

The list of cases doubted, overruled, &c. will fall to your lot, but as I read, I will keep a memorandum of those which pass under my view.

I shall probably have some leisure in the autumn, and then will work on the Digest as diligently as possible. . . .

By the by, I think some of Judge Johnson's opinions in the third volume of your Reports, very uncourteous to some of his brethren. It is surprising that he is not sensible how strikingly he errs in a point where he is so very jealous himself. I mean in respect to a tenderness for the judgment of others.

Yours, very truly and affectionately,

JOSEPH STORY.

In pursuance of the proposition to assist in the preparation of the Digest, contained in the preceding letter, my father actually prepared the following titles for his friend:

1. Admiralty and Instance Court, and every thing relating to it except Prize.



2. Bills of Exchange and Promissory Notes.
3. Real Actions, and all the law applicable to it.
4. Shipping, every thing that Abbott treats of.
5. Statutes of United States, construction of.
6. Pleas and Pleadings.
7. Practice, except Prize and Chancery Practice.
8. Jurisdiction of the Courts of the United States.
9. Salvage.

The following passages from a long and very able argumentative manuscript by my father, covering four closely written sheets, in which "a bill further to extend the judicial system of the United States" is taken up clause by clause and its provisions vindicated and explained, will be interesting as showing his zeal in working for the public, as well as for his friends. It was written in 1816, to serve as the basis of a speech to be made by a friend in Congress. It will be perceived that the bill itself was also drawn by my father. In his commentary upon the first section, he says, —

"SECT. 1. The object of this section is to give to the Circuit Court *original* jurisdiction of all cases intended by the Constitution to be confided to the judicial power of the United States, where that jurisdiction has not been already delegated by law. If it was proper in the Constitution to provide for such a jurisdiction, it is wholly irreconcilable with the sound policy or interests of the Government to suffer it to slumber. Nothing can better tend to promote the harmony of the States, and cement the Union (already too feebly supported) than an exercise of all the powers legitimately confided to the General Government, and the judicial power is that which must always form a strong and stringent link. It is truly surprising and mortifying to know how little

effective power now exists in this department. The most monstrous mischiefs and difficulties have already resulted from the narrow limits within which it is confined, and will be perpetually increasing. Indeed, little short of miracles can have prevented irreparable injuries. The only jurisdiction which has been completely delegated is that "of all cases of Admiralty and Maritime Jurisdiction;" and by turning to the third article of the Constitution you will readily perceive how very large a portion of the cases therein stated, are now utterly beyond our reach. I will barely illustrate my positions by a reference to a single class of cases.

No Court of the United States has any general delegation of authority "in all cases in law and equity arising under the Constitution, the laws of the United States, and the treaties made, or to be made, under its authority." The consequence is, that in thousands of instances arising under the laws of the United States, the parties are utterly without remedy, or with a very inadequate remedy. Even the United States themselves have no general power to vindicate their own rights in their own Courts; for the power to sue there is confined by the laws to *particular* cases. If a public officer be wrongfully withheld from his office; if an ejected officer, or mere wrongdoer, usurp an office; if an officer, who has been dismissed, refuse to deliver over the muniments and records of his office; if an officer refuse to do that which the laws positively require; the United States and the parties interested are utterly without remedy. No Court can, in any of these cases, issue a writ of *mandamus*, a *quo warranto*, or other proper writ, nor can it sustain an action for damages; for the jurisdiction of the Courts of the United States is not yet extended to "cases arising under the laws of the United States;" and they can grant no relief where no jurisdiction is given. Suppose a patent for land issues improvidently or fraudulently; suppose it be withheld by the proper officer from the rightful owner; or suppose the officer refuse upon frivolous and groundless pretences to



grant a patent, or to execute his public duties in respect to private rights, where can the injured party now obtain redress? A collector of the customs may refuse to grant a clearance in a notorious case of right; he may refuse to grant a debenture; he may exercise every sort of oppression, and if the State Courts will not give the injured party a remedy, (and they cannot grant a *specific* remedy,) he must submit to be ruined; or if the Collector act merely under a mistake, and the State Courts will sustain a suit, the probability is, (and so the fact has heretofore been,) that the most vindictive damages will be given to the entire ruin of the Collector. Is it credible that the United States will submit all their own rights, and those of their officers to the decisions of State tribunals? Will they suffer the greatest public mischiefs to exist, and not even in respect to their own peculiar rights reserve a power to enforce a specific vindication? Are the Judicial Courts of the United States so utterly destitute of all character, as that the ordinary powers, which the most common County Court possesses should be denied to them? If indeed the present Courts are inadequate in talents, or destitute of integrity, and ought not therefore to be trusted, let Congress in their wisdom create new tribunals more faithful and more intelligent. But let not the dignity of the Government or of its officers, be sunk so low that its authority may be scoffed at and denied with impunity.

I have touched but a few cases in which there is now no adequate remedy. Allow me barely to mention one more, in which I am sure you must have practically felt the great deficiencies of the laws. Patent rights for inventions have become extremely valuable; but the present remedy, by an action in the case, is wholly insufficient to protect the proprietor. He may be ruined by the mere attempt to vindicate his rights. If the Courts of the United States had jurisdiction in "all cases in law and equity arising under the laws of the United States," a bill in equity for an injunction would be the usual, as it is the efficient remedy.



"I ought, indeed, to apologize for these suggestions, because I am perfectly aware, that you cannot but be possessed in a much higher degree than myself, of a knowledge of the great deficiencies in the jurisdiction, and the necessity and policy of an immediate remedy. If we are ever to be a great nation, it must be by giving vital operation to every power confided to the Government, and by strengthening that which mingles most easily and forcibly with the habits of the people. I hold it to be a maxim, which should never be lost sight of by a great statesman, that the Government of the United States is intrinsically too weak, and the powers of the State Governments too strong; that the danger always is much greater of anarchy in the parts, than of tyranny in the head. And if I were required to point the maxim by reference to the lessons of experience, I should, with the most mortifying and self-humiliating recollections, turn to my native state, as she stood and acted during the late war. May I add, that the present moment is every way favorable to the establishment of a great national policy, and of great national institutions, in respect to the army, the navy, the judicial, the commercial, and the internal interests, of the country. And I hope you will pardon me, when I assert, that I know not where a statesman might reap a harvest of more honorable laurels, or more permanent fame, than by fixing the judicial system of the United States upon its broadest constitutional basis; and I know not where the country can so properly look for such a personage, as to one who, while abroad, honored his country by an unequalled display of diplomatic science, and on his return illumined the halls of justice with an eloquence of argument, and depth of learned research, that have not been exceeded in our own age."

The last passage clearly shows, that this paper could have been addressed to no other than Mr. Pinkney.

The interest taken by my father in the reform of

the criminal code of the United States has already been adverted to. The following passage, in which the eleventh section of the Bill, giving general jurisdiction to the United States' Courts to punish crimes committed against the Federal Government, is commented on, shows how actively he strove to supply the deficiencies in the legislation of Congress on this subject.

"This is the most important section of the whole bill. The criminal code of the United States is singularly defective and inefficient. There are, in the statutes of the United States, prohibitions against doing some acts, and mandates to do others, which have no penalties annexed to them. But this is a very small grievance. Few, very few, of the practical crimes, (if I may so say,) are now punishable by statutes, and if the courts have no general common law jurisdiction, (which is a vexed question,) they are wholly punishable. The State Courts have no jurisdiction of crimes committed on the high seas, or in places ceded to the United States. Rapes, arsons, batteries, and a host of other crimes, may in these places be now committed with impunity. Surely, in naval yards, arsenals, forts, and dockyards, and on the high seas, a common law jurisdiction is indispensable. Suppose a conspiracy to commit treason in any of these places, by civil persons, how can the crime be punished? These are cases where the United States have an exclusive local jurisdiction. And can it be less fit that the Government should have power to protect itself in all other places where it exercises a legitimate authority? That Congress have power to provide for all crimes against the United States, is incontestable. The only question is, whether this is to be done by passing laws in detail respecting every crime in every possible shape, or shall give the Courts general jurisdiction to punish wherever the authority of the United States is violated, and leave the Courts to settle this by legal constructions, upon



common law principles. In my judgment, the former course is utterly impracticable. Crimes are so various in their nature and character, and so infinitely diversified in their circumstances, that it is almost impossible to enumerate and define them with the requisite certainty. An ingenious rogue will almost always escape from the text of the statute book. But how much more certain is the common law. Its flexibility in adapting itself to all the circumstances of the various cases is wonderful. And it is precisely for this reason, that it ascertains crimes, not by the words of a positive law, but by a text applicable solely to the question, whether they violate public rights or public policy. The redress is therefore coextensive with the mischief.

"I presume that there cannot be a doubt as to the right of Congress to delegate authority in general terms over crimes. It is not assuming a general common law jurisdiction, but only applying the common law definition of crimes to the limited powers delegated by the Constitution to the United States. Of course, many common law crimes, being no violation of the sovereignty of the United States, will not fall within the cognizance of their courts. But those common law crimes which do violate its sovereignty, will be (and ought they not to be?) punishable by them. I once drew up a supplemental criminal code for the more common crimes against the United States, which were not in the statute book. It extended to twenty sections, and yet included but a small portion, although I generalized as much as possible. I gave up the task with a thorough conviction that it was worse than useless. In discharging my judicial duties, I have found that in three out of four of the indictments brought before me, the statute law was so inartificially drawn, that a conviction of a real offender was not possible.

"Nor can I conceive how it is possible to entertain any dread of the common law. It is the law of every State in the Union. The smallest County Court or Court of *pie poudre* acts upon and enforces it, even as to crimes, and I



never yet heard that it interfered with our public or private liberties. We well know that all crimes which are punishable at common law in England, are not punishable here. But this is, in general, no result from positive acts of the Legislature; but from an application of common law principles to the nature of our public institutions and constitutions of government. If, then, State Courts may apply the common law to State Constitutions, why may not United States Courts apply it to the Constitution of the United States? The view, which I have here been taking, steers altogether wide of the question, whether the Courts of the United States have from their very organization a general common law jurisdiction, or the United States a general common law authority. For, be this as it may, (on which I feel no doubt,) it is still competent for Congress to adopt as to its own powers an exercise of common law principles. In the Reports of the Circuit Court of my circuit, (vol. 1, p. 448,) you will find my deliberate opinion on this common law jurisdiction; and I will add that, excepting Judge Chase, every Judge that ever sat on the Supreme Court Bench, from the adoption of the Constitution until 1804, (as I have been very authoritatively informed,) held a like opinion. Since that time, there has been a difference on the Bench, and it is still a question which we all hold unsettled. I believe, however, that none of us entertain any doubt as to the authority of Congress to invest us with this jurisdiction, so far as it applies to the sovereignty of the United States.

"I will conclude these remarks by an anecdote of the late President Adams, which I have received from his private Secretary, and as it has been recently confirmed by the President himself, I do it with more entire confidence in its accuracy. While he was Vice President of the United States, and the proceedings were had on *Blount's Conspiracy* before the Senate, this question as to the adoption of the common law was discussed before that body; and his opinion, as that of a great lawyer, (as he certainly was,) and as a great revo-

lutionary patriot, was called for on every side. He rose from his chair, and emphatically declared to the whole Senate, that if he had ever imagined that the common law had not by the Revolution become the law of the United States under its new government, *he never would have drawn his sword in the contest.* So dear to him were the great privileges which that law recognized and enforced."

After considering all the sections of the proposed bill, he thus proceeds:—

"I have thus run over the various clauses of the bill in a cursory manner, and as I have written in very great haste, I must beg you to excuse the slovenly manner in which I have been obliged to throw my remarks together. The Circuit Court has been sitting for a long time, and I have not as yet had any leisure for a more elaborate view of the bill. I thought it best to send my remarks immediately, because I am entirely satisfied, that if any thing is to be done for the judiciary, it must be presented early in the session, before the great public business has engrossed the public attention, and jostled minor objects out of their places.

"The printed bill was originally prepared by myself, and submitted to my brethren of the Supreme Court. It received a revision from several of them, particularly Judges Marshall and Washington, and was wholly approved by them, and indeed, except as to a single section, by all the other Judges. Judge Johnson expressed some doubt as to the eleventh section; but, as I understood him, rather as to its expediency than the competency of Congress to enact it. I think that I am at liberty to say, that it will be satisfactory to the Court, if it is passed. It will, indeed, give us more business, and we have now as much as we wish. But it will subserve great public interests, and we ought not to decline any thing which the Constitution contemplates and the public policy requires.



"May I add, that if I shall be so fortunate as to meet your opinions on this subject, and the public so fortunate as to interest your zeal and talents in the passage of the bill, it will establish an epoch in our juridical history, which will be proudly appealed to by all, who in truth and sincerity love the Constitution of the United States. It will be a monument of fame to the statesman who shall achieve it, which, being independent of the political opinions of the day, will brighten as it rises amid the dust and the ruins of future ages."

In conclusion, he diverges from the subject of the bill, to urge the propriety of increasing the salaries of the Judges of the Supreme Court of the United States.

"I have thus far discharged myself of what more immediately concerns the public. I beg now to call your attention to a consideration of some concerns of a more personal nature. I refer to the present salaries of the Judges of the Courts of the United States. I am sure that I need not state to you how utterly inadequate they are; and how injurious to the public interests a much longer continuance of this false economy will be. Allow me to state some facts.

"1. The salaries of the Judges of the Supreme Court, (\$3,500 per annum) and of the principal District Judges, were fixed in the year 1789, and remain the same to this day.

"2. At that time (1789) the heads of the Treasury and State Departments received the same sum of \$3,500 per annum, and the compensation of the Judges was graduated by the same scale.

"3. In the year 1799, the salaries of the heads of the State and Treasury Departments were very properly raised to \$5,000 per annum, and those of the other heads of De-



partments proportionally. Nothing was done for the Judges of the Supreme Court.

"4. It is notorious that these increased salaries are wholly insufficient for the comfort and convenience of the heads of the Departments.

"5. The necessities and comforts of life, the manner of living, and the habits of ordinary expense in the same rank of society, have, between 1789 and 1815, increased in price from one hundred to two hundred per cent.

"6. The business of the Judges of the Supreme Court, both at the law term in February, and on the Circuits, has, during the same period, increased in more than a quadruple ratio, and is increasing annually. It is a fact, that in my Circuit, since I have been on the Bench, (in four years) I have heard and decided more causes than my predecessor did in the whole period from his appointment (1789) to his death, (1811). Indeed, I might safely say, that the number was fourfold greater. By this increase of business the necessary expense of our Circuits is very much increased.

"7. The compensation of the District Judges is proportionally small. The District Judges of Massachusetts, New York, Pennsylvania, and Maryland, have only \$1,600. Yet these Judges must reside in the capitals of these States, and the salary will hardly find them in house room and in fuel.

"8. The salary of the Attorney-General is also inadequate, as you well know, to the necessary expenses and cares of that highly responsible law officer.

"It does seem to me, that the Government are called on by every motive of public policy and public dignity to enlarge the salaries of all these officers. It will hold out a motive for ambitious young men to qualify themselves for these offices, and secure to the Government a succession of men, whose talents and virtues shall place them in the first rank in the profession. With a view to a more exact statement of my opinion as to the relative increase of salary, I have ventured to send a sketch of a bill, in which I have filled the

blanks with the proper sums, which my own judgment would prompt me to allow. I hope that in making these suggestions you will not deem me intrusive; but will consider them as the result of an earnest desire to promote the public interest, as well as to subserve my own immediate interest.

"I have added a clause, giving to the Judges fees in cases where they act as ministerial officers in taking depositions, acknowledgments of deeds, &c., some of which are duties that they are not bound to perform. Some Judges now take fees, but others, from delicacy, decline. It should be put beyond a possible misconstruction. Many of these services are now performed altogether under State laws, or State commissions."

The next letter relates to the able note by my father "on the Patent Laws," printed in the Appendix to the third volume of Wheaton's Reports.

TO HENRY WHEATON, ESQ.

Salem, April 8th, 1818.

MY DEAR SIR:

I am glad to learn that you will so soon put the Reports of the last term to the press, and I wish that some of the important cases, which stand continued for advisement, had been decided, not to increase the bulk, but to add to the weight of the volume. In *Bevans's* case, I hope you will take care to put in a note the very words of the authorities, respecting the exemption of public ships, which point was held clear by a majority of the Court, although from delicacy, an opinion being unnecessary, it was withheld. At the earnest suggestion (I will not call it by a stronger name) of Mr. Justice Washington, I have determined not to deliver a dissenting opinion in *Olivera v. The United Insurance Company*, (3 Wheaton's R. 183.) The truth is, I was never more entirely satisfied that any decision was wrong, than that this is, but Judge Washington thinks (and very correctly) that the



habit of delivering dissenting opinions on ordinary occasions weakens the authority of the Court, and is of no public benefit. It is no small proof of my good nature, that I have yielded in this instance, for since my return I have read pretty fully on the subject, and am more and more convinced that my original opinion was right.

I do not remember that there were many cases decided, which would admit of annotation to an extensive degree, but in *Robinson v. Campbell* there might be a note on the point, in what cases title in a third person may be given in evidence, and in *Evans v. Eaton* the cases on patents might be collected and analyzed. If I can be of any use to you on these heads, I am always at your service. My family, however, has been quite sick since my return, and my little invalid daughter has been very severely ill, but is now convalescent. If she should continue better, I shall have leisure to write the notes on these points; but, perhaps, to be sure, you had better prepare them yourself. Gallison's Reports will give you several cases on patent rights, and I have some others in manuscript. . . .

Your very obliged and affectionate friend,

JOSEPH STORY.

The case of *United States v. Bevens*, (3 Wheaton's R. 336,) alluded to in this letter, was founded on an indictment for murder committed by the defendant on board the United States ship of war *Independence*, while lying in the harbor of Boston, and the question which came before the Supreme Court of the United States was, whether the crime was within the jurisdiction of the Courts of the United States, or only of the State Courts. It was held, that, although the Constitution of the United States conferred ample authority on Congress to pass laws giving to the Federal Courts jurisdiction over such



cases, yet that Congress had not exercised that power by their legislation, and consequently, that the case in question was not within their cognizance.

The next letter refers to the same case.

TO HENRY WHEATON, ESQ.

Salem, April 10th, 1818.

MY DEAR SIR:

According to your request I enclose you my opinion in *United States v. Bevens*. I have never changed my mind as to its legal accuracy, but as the case was a capital offence, I yielded to the opinion of my brethren. If it had been of another nature, I should have adhered to it. You will see that I have altered the opinion at the close accordingly. The truth is, that after the decision, I put the opinion by with a view at some future day perhaps to publish it, and I should have delivered it in Court, if I had not felt a delicacy in respect to the Chief Justice, especially as I acquiesced in the opinion he delivered; though I think it is not drawn up with his usual precision and accuracy. You will please therefore to keep my opinion *confidential*, though, if you think it worth preservation, I have no objection to your taking a copy of it, as corrected, for your own *private* use, but by no means for the public use. Upon the point as to exemption of a public ship of war from State jurisdiction, a majority of the Court held the same opinion as myself, although, as the decision of the other point settled the cause, that opinion was suppressed from motives of delicacy. I wish you would send me the opinion when you are done with it, as I have no copy.

I am, very affectionately,

Your obliged friend,

JOSEPH STORY.

## CHAPTER X.

### JUDICIAL LIFE.

PUBLICATION OF THE SECOND VOLUME OF GALLISON'S REPORTS — CORRESPONDENCE WITH SIR WILLIAM SCOTT — ANECDOTE RELATING TO THIS VOLUME — SIR WILLIAM SCOTT'S OPINION OF IT — PRINCIPAL CASES IN IT — REVIEW OF MR. HOFFMAN'S "COURSE OF LEGAL STUDY" — EFFECT OF MY FATHER'S JUDICIAL POSITION ON HIS POLITICAL FEELINGS — HIS FREEDOM FROM JEALOUSY — DRAWS UP TWO ACTS OF CONGRESS — WRITES A REVIEW OF JACOBSEN'S SEA LAWS — CASE OF HARVEY *v.* RICHARDS — LETTER TO SIR WILLIAM SCOTT DESCRIBING THE CONDITION OF THE ADMIRALTY, AND THE LITERARY CONDITION OF THIS COUNTRY — CASES OF DARTMOUTH COLLEGE *v.* WOODWARD, AND MARYLAND *v.* BANK OF THE UNITED STATES — SALARY OF THE JUDGES OF THE SUPREME COURT IS RAISED — LETTERS TO MR. GREENLEAF RELATING TO A NEW EDITION OF HOBART'S REPORTS, AND A VOLUME OF OVERRULED CASES.

THE approbation, with which the first Volume of Reports of his opinions was received by the profession, induced the publication of a second volume in November, 1817, and the establishment of a permanent reportership over this Court, to which Mr. Gallison was appointed. The principal cases in this volume are *Maissonnaire v. Keating*, in which the law relating to Ransom Bills is discussed; "The Invincible," in which it is held, that the trial of prizes belongs exclusively to the Courts of the county to which the captors belong; "The Jerusalem," which asserts the jurisdiction of the Admiralty over

suits by material-men, and discusses their right of lien ; and the great case of *De Lovio v. Boit*, spoken of before. No one of the cases reported in this volume was reversed by the Supreme Court.

This, together with the first volume, he sent to Lord Stowell, (then Sir William Scott) with a letter expressive of his admiration for the judgments of that accomplished Judge, which I have not been able to procure. In answer, Sir William Scott wrote the following letter, which shows the high value he placed on these judgments of my father in a branch of law in which he himself was so distinguished : —

TO THE HON. MR. JUSTICE STORY.

London, July 2d, 1818.

SIR :

I have received through the favor of our minister, Mr. Bagot, your valuable donation of Books of Reports, accompanied with a letter expressive of sentiments which I cannot but receive with the highest satisfaction. It makes me proud, indeed, that any labors of mine are approved by gentlemen of a country upon which they may sometimes have operated with apparent harshness, but who are so well capable of estimating fairly, and upon reflection, their real conformity to the law, which it was my duty to administer.

I have received with great pleasure the volumes of Reports, and am very glad to add my testimony to the acuteness and learning which are everywhere displayed in them. It is highly gratifying to us to see the same principles to which we think we owe so much in England still adhered to in America, and built upon as occasion may require with equal zeal, but with equal caution in all the deductions.

The termination of the wars which have long affected the world, has consigned the Court, with which I am principally



concerned, to a very moderate degree of activity, such as furnishes a very scanty supply to volumes of Reports. There are, I believe, none but what must have reached America long ago. They have turned chiefly upon our Revenue Statutes, and contain often little of general remark and application. Such as they are, I should have desired your friendly acceptance of them, but that I take for granted, the very few of them that there are have found their way there already. There are none of any recent publication in this country.

I must request your acceptance of my sincere acknowledgments for your having opened a correspondence, which I shall be most happy to continue, if your convenience will admit.

I have the honor to remain, with true respect, and all personal good wishes, dear sir,

Your faithful and obliged servant,

WILLIAM SCOTT.

The preceding letter was sent to my father, through Mr. Bagot, the English Minister at Washington, who, in transmitting it, gives the following extract from a letter of Sir William Scott to him, referring to these volumes:—

“I am very glad to find that the law is cultivated with so much success in America. These books give me a very high opinion of the attention paid to subjects of that kind, and of the acuteness with which they are discussed. They are very creditable indeed to the Courts of that country.

The following anecdote, communicated to my father by Charles S. Daveis, Esq., as being told to him by Sir James Mackintosh, will not be without interest in this place:—

“At an evening club, where Sir James Mackintosh was present with Lord Stowell, (then Sir William Scott) Sir

William Grant came in with a book in his pocket, which was no other than a volume of the Reports of the excellent and lamented Gallison, and which he drew out rather archly, observing to Sir William Scott, 'This Mr. Story appears to be a promising pupil;' adding, 'You must not expect these doctrines of yours to be confined to one belligerent power, but they must make the tour of all the belligerents.' This was done by Sir William Grant, as Sir James Mackintosh said, 'with malice prepense.'"

In 1817, my father wrote for the North American Review an article on Professor Hoffman's "Course of Legal Study." This is a finished and elegant essay on the growth and expansion of the Common Law in modern times, and exhibits the juridical scholarship of the writer. It was subsequently included in the volume of Miscellaneous Writings. Of this article, he thus speaks, in a letter to Mr. Wheaton, dated November 13th, 1817:—

"I have been applied to by the editors of the North American Review, (though I do not personally know them,) to furnish them a review of Mr. Hoffman on the Study of the Law. I have prepared one, which is to be published in the next number. When it comes out, I beg you to peruse it, not so much for what it contains, as for the coincidence with some of your favorite views. I wrote it in a good deal of haste, and under considerable pressure; and if I had been indulged with more time, I should have given more ample views. Show it to Mr. Hoffman, but without intimating that I had aught to do with it, for (without affecting secrecy) I shall not be *suspected* as the author of any thing in the Review."

The following letter, written from Washington, gives a

glimpse into the politics of the time, and indicates the feelings with which my father looked upon its turmoil, and the strong judicial bias which his mind had acquired. The glowing enthusiasm, which filled with bright visions the future history of his country, had become sobered. Behind the curtain he saw the reverse of the tapestry of patriotism. Removed from all active participation in party contests, he could look impartially on the struggle, and saw that but too often it was for power and place, not for the wellbeing of the country. The sorrow of his domestic life, and severe judicial training, had calmed his judgment. Sitting in the "gladsome light of Jurisprudence," the political world seemed to be lighted by squibs and fire-rockets. From this time his correspondence assumes a less sanguine character, and many doubts as to the impregnability of the Union begin to gather in his mind. Significantly enough, it is at this time that he begins to omit the flourish which he had hitherto been accustomed to draw under his signature, and to write his name simply.

TO HON. EZEKIEL BACON.

Washington, March 12th, 1818.

MY DEAR SIR:

I had the pleasure of receiving, a short time since, your letter, addressed to me in this city. I regret exceedingly, that I had not the good fortune to meet you at Philadelphia, as I should have seen you face to face, and conversed more in one hour upon all the topics interesting to us, than we could write in a month.

The business of the Court has been, and continues to be, so pressing that I scarcely go to any places of pleasure or fashion; however, there is a great deal of gayety, splendor,



and as I think, extravagance in the manners and habits of the city. The old notions of republican simplicity are fast wearing away, and the public taste becomes more and more gratified with public amusements and parade. Mr. Monroe, however, still retains his plain and gentlemanly manners, and is in every respect a very estimable man. But the Executive has no longer a commanding influence. The House of Representatives has absorbed all the popular feeling and all the effective power of the country. Even the Senate cowers under its lofty pretensions to be the guardians of the people and its rights.

Congress has become a scene of dry, metaphysical reasoning or declamatory eloquence; the real business of the nation is left undone, or is badly done. There is no rallying point for any party. Indeed, every thing is scattered. Republicans and Federalists are as much divided among themselves, as the parties formerly were from each other. I do not regret the change. I have long been satisfied that the nation was in danger of being ruined by its intestine divisions; and, fortunately, among men of real talent, and real virtue, and real patriotism, there are now few, if any, differences of opinion. But a new race of men is springing up to govern the nation; they are the hunters after popularity, men ambitious, not of the honor, so much as of the profits of office,—the demagogues whose principles hang laxly upon them, and who follow not so much what is right, as what leads to a temporary vulgar applause. There is great, very great danger that these men will usurp so much of popular favor that they will rule the nation; and if so, we may yet live to see many of our best institutions crumble in the dust.

I have told you, I believe, that I have done with party politics; that my heart is sick of the scenes of strife, and sometimes of profligacy, which it presents. I have no desire ever again to enter the contest for popular favor; yet I hope I love my country and its institutions, and I know

that I reverence the principles of liberty and the Constitution of the United States.

Already there is considerable stir and whispering as to who is to be the next President. It is thought here that J. Q. Adams will not be a successful candidate. It seems that the great objection to him is, that he is retiring and unobtrusive, studious, cool, and reflecting; that he does nothing to excite attention, or to gain friendships. He contents himself with doing his duty without seeking any reward. I suspect that he is not calculated for popularity: the old proverb asserts that - God helps them who help themselves."

Mr. Clinton, Mr. Crawford, and Mr. Clay are the leading candidates on the list; each has very strong and ardent friends. Mr. Clay is supposed to be hostile to the present Administration: Mr. Crawford conducts himself with moderation and propriety: Mr. Clinton is silently winning his way to general favor.

I have written more than I at first intended; I pray God to bless and preserve you, and assure you that I am your very obliged and affectionate friend,

JOSEPH STORY.

The following extract from a letter to Mr. Wheaton, dated December 9th, 1818, is very characteristic, and shows the generous feelings which he desired to cultivate among the eminent rivals at the bar:—

TO HENRY WHEATON, ESQ.

Salem, December 9th, 1818.

MY DEAR SIR:

. . . I am quite persuaded, without having heard a word of the facts, that our friend Mr. Pinkney is wrong in the recent disagreement with Mr. Wirt. The latter is a most worthy, good-humored, spirited gentleman, of eminent talents and fine accomplishments. Mr. Pinkney should not undervalue him, nor seek to obtain a temporary glory by rob-

bing him of a single laurel. This world is wide enough for all the learning and genius, public virtue and ambition, of all the wise and the good, and it is a great mistake for a great man to indulge in an arrogant pride or a morbid jealousy in respect to his competitors or rivals. I have the highest opinion of Mr. Pinkney, who is truly *princeps inter principes*. We must talk with him on this subject, and make him feel he has much to lose, and nothing to gain, by the course he sometimes pursues. He need not fear entering into competition with any advocate. All acknowledge his talents, and his learning. He will gain by returning the acknowledgment in a just deference to the talents of others. . . .

The next term of the Supreme Court will probably be the most interesting ever known. Several great constitutional questions, the constitutionality of insolvent laws, of taxing the Bank of the United States, and of the Dartmouth College new charter, will probably be splendidly argued. Mr. Pinkney is engaged in these and in several other very important questions sent from my circuit. It seems highly probable that the bankrupt act will pass. The reform in the Judiciary appears also to gain friends. But, unfortunately, no one seems heartily to exert himself to save the present Judges from *starving* in splendid poverty. We have no patronage, we can grant no favors, we are no instruments to aid legislative or executive views; and Congress, and the President and the people are equally indifferent whether we are ill or well paid. I have no expectation of any increase of salary.

In great haste, I am as ever,  
affectionately, yours,

JOSEPH STORY.

The following letter shows how his heart was touched by the bereavement of a friend.



TO HENRY WHEATON, ESQ.

Salem, November 2d, 1818.

MY DEAR SIR:

My necessary absence, attending Court at Boston, prevented me from earlier answering your letter of the twenty-second ultimo. The information of the death of your oldest child was new to me, and truly afflictive. Most sincerely do Mrs. Story and myself sympathize with you and Mrs. Wheaton, in your sorrows, your deep unutterable sorrows. There is scarcely a human calamity which more tenderly affects us than the loss of our children. From the moment of their birth we contemplate them as the objects of our dearest affections, and we look forward to the time when they shall be the solace and support of our age, and smooth the bed of death, when we approach the bourn whence there is no return. There is something, therefore, revolting to our feelings in witnessing what would seem to be the reversal of the natural order of things, and when we bend in tears over the graves of our children, we feel that we bury our hopes in the same grave with them.

There is, my dear sir, no human mode of administering consolation in these cases. I know full well, and full bitterly, how utterly inane are all attempts to philosophize on the subject. Doubtless a wise Providence has allowed these evils to overshadow us, that we may not too strongly cling to worldly joys, and that we may accustom ourselves to look forward to another and a better world. Time and employment, constant, unremitted employment, are the only remedies which, under these afflictions, alleviate our distress in any considerable degree, and yet how feeble and ineffectual they are to raze out the written troubles of the brain! There is now, and always will be, a dark melancholy cast over the mind after such losses, which, although partially lighted up, never wholly disappear. But no more on this subject, which

is insensibly opening wounds of my own that are scarcely healed.

With great esteem, I am your faithful and  
affectionate friend,

JOSEPH STORY.

During this year (1818) he was secretly active in the public service, giving his earnest labors to the establishment of law and the strengthening of the government. He drew up "A Bill further to extend the Judicial System of the United States," as well as "A Bill to provide for the Punishment of certain Crimes against the United States, and for other purposes," the latter of which was afterwards made the basis of the famous Crimes' Act, written at a later date.

During the year 1818 he wrote an article on Jacobsen's Sea Laws for the North American Review. This is an Essay on the growth of the Maritime Law from the earliest periods of Commerce. Its progress is traced with much learning and care from the old Rhodian law down through the Roman era, following the Codes of Gregorius, Hermogenes and Theodosius, till they emptied themselves into the Institutes, Codes, and Pandects of Justinian, and became illustrated by the various Roman Commentators; then pursuing it through the Middle Ages, which gave birth to the Consolato del Mare, (of which a sketch is given,) to the treatises of Peckius, Weytsen, Straccha, and Santerna in the sixteenth century; and of Stypmannus, Loccenius, and Kuricke in the North, and Cleirac, Roccus and Valin in the South, in the seventeenth century; to Bynkershoek, Casaregis, and Targa, those distinguished civilians, by whose genius the eighteenth century was illuminated. Then turning to



England, he gives a beautiful sketch of Lord Mansfield, and of the influence exerted by him upon the Commercial Law of that country, and concludes with a notice of the work by Mr. Jacobsen.

This article displays entire familiarity with the literature and history of the Maritime Law from its earliest beginnings. The sketches of the various writers, and the critical notices of their works, are very interesting, and show that the writer was as conversant with the characters of the former as with the contents of the latter. It is an admirable birdseye view of the whole subject, and peculiarly exhibits his power of disposing materials in luminous order, seizing characteristic features, and subordinating details to comprehensive views. No student of the Maritime Law should omit to read this paper. It may stand beside the admirable lecture of Sir James Mackintosh on the Law of Nature and Nations.

In the early part of the year 1819, Mr. William P. Mason (who, on the death of Mr. Gallison became the reporter of the Circuit Court, over which my father presided,) published his first volume of Reports. The principal case contained in it is the important one of *Harvey v. Richards*, which was a bill in Equity brought to compel the defendant (who was administrator with the will annexed of James Murray, of Calcutta,) to the distribution of the undivided estate of the testator, collected by him and in his hands, among the next of kin, who resided in Massachusetts. The question was, whether the Court, as a Court of Equity, could proceed to decree an account and distribution of the property in the hands of the defendant, or was bound to order it to be remitted to Calcutta for distribution by the proper tribunal in that



place. Or, to state the question more broadly, it was, whether a Court of Equity here has competent authority to decree the division of intestate property collected under an administration granted here, the intestate having died abroad, and the disposition being to be made according to the law of the foreign domicil. This question, of course, involved the doctrines of international law and comity, which are fully discussed. The judgment reaches the equities of the case in the most masterly manner. All the main authorities are commented on, all objections answered, and while the jurisdiction of a Court of Equity to decree an account and distribution is fully asserted, it is also declared, that no rigid, universal rule can be laid down on the subject, but only one which shall be flexible and dependent in its application upon the circumstances of the particular case.

Of this case he says, in a letter to Mr. Wheaton, dated December 9th, 1818, —

“I took a great deal of pains in preparing this opinion, and the more so, as I felt compelled to overturn two decisions of the State of Massachusetts.”

This volume he transmitted on the 14th of January, 1819, to Sir William Scott with the following letter, describing the condition of the Admiralty Law when he took his seat on the Bench, and giving a sketch of the literary condition of the country. The periodical sent was the *North American Review*, then just commencing under the editorship of Mr. Edward Everett.

TO SIR WILLIAM SCOTT.

Salem, January 14th, 1819.

SIR :

By the kindness of Mr. Bagot, the British Minister here, I had the honor to receive your letter of the 2nd of July last, in the course of the autumn. My apology for delaying to answer it at that time, is the desire that I had to accompany it with a volume of Reports, which was then passing through the press, and is just published. I beg your friendly acceptance of this volume, as a renewed mark of my unfeigned respect for your private and public character, and for your services to the world at large, by promulgating the rational and consistent doctrines of the Law of Nations. I return you also my sincere thanks for the favorable manner in which you have been pleased to speak of the former volumes, the decisions in which, whatever may be their merits in other respects, were made under an anxious desire to administer the law of Prize upon the principles which had been so luminously pointed out by yourself.

The predicament, indeed, in which the Courts of this country found themselves at the beginning of the late war, affords some apology for the minute discussions occasionally indulged in on mere points of practice, and also for the errors which are probably to be found here and there in the adjudications. We had not the benefit of a long-established and well-settled jurisdiction, and of an ancient customary law, regulating the practice of the Court.

The traditions of former times and the modes of proceeding, were not familiarly preserved by a body of regular practitioners in the Court. The Admiralty Law was in a great measure a new system to us; and we had to grope our way as well as we could by the feeble and indistinct lights which glimmered through allusions incidentally made to the known rules and proceedings of an ancient court. Under these cir-



cumstances, every case, whether of practice or principle, was required to be reasoned out, and it was scarcely allowable to promulgate a rule without at the same time expounding its conformity to the usages of Admiralty tribunals. I hope that a foundation has now been laid, upon which my successors in America may be able to build with more ease and security than fell to my lot. Indeed, an elementary work on the practice of the Prize and Instance Court, illustrated by appropriate forms, and a historical view of a suit, would be a most valuable present to American lawyers, however unnecessary it may seem in England. Independent of the United States Courts, each State has a separate, independent Judicial establishment, in which, for the most part, the jurisdiction embraces as wide an extent as the Courts of Common Law and Chancery in England. Regular Reports are published of the decisions of the highest State tribunals in the principal States, and it may not be unsatisfactory to Lords Eldon and Ellenborough to know that in a few months after these decisions are published, they circulate throughout America, and are used and commented on, as guides to all our Courts; not indeed as binding authorities, but as most respectable and well-considered judgments. Perhaps I may be permitted to say, that some of those Reports, particularly in the commercial States, are distinguished by a depth of learning, and an acuteness of reasoning which would entitle them to consideration in every other tribunal.

So great is the call for talents of all sorts in the active pursuits of professional and other business in America, that few of our ablest men have leisure to devote exclusively to literature, or the fine arts, or to composition, or to abstract science. The learning, which is principally and eagerly sought, is of a practical nature, adapted to our wants, and suited to our business. Yet, with this obvious reason to explain why we have few professional authors, and those generally not among our ablest men, I fear that our attainments are far less valued in Europe than, upon a fair examination, they would deserve.



Education of some sort is almost universal among us, and though classical knowledge, in the perfection which a life devoted to it would give, is rare in this country, there is a vast body whose knowledge of the learned languages is sufficient for the ordinary purposes of professional life. We have learned divines, and lawyers, and physicians; our universities encourage classical and liberal pursuits, and every day, as our wealth increases, a new and ardent spirit of improvement is manifested in every department of science. The time is not indeed arrived when we can hope to enter into competition with the learned of Europe, but it is a great mistake to suppose that we are either idle or indifferent to the cause of learning. We read whatever Europe produces, and I trust we are instructed by it. But as, at present, we must seek the means to live, we are obliged reluctantly to quit classic walks for the toils of business.

I have been led into these few remarks, which I persuade myself you will receive in a spirit of candor, by observing the very inaccurate manner in which we are generally represented by European travellers. While a few speak of us in terms of exaggerated praise, which we are conscious we do not deserve, a great majority condemn us, and that too by gross misrepresentations of facts, and in a most ungracious manner. The remarks, too, of this class of travellers, are generally made from a slight acquaintance in the newly settled States, which thirty years ago were a wilderness; and as far as we can judge, they seem totally unacquainted with the New England States. Yet in these States the population is nearly as dense as in the inland counties of England, if we except one or two large manufacturing cities. It has appeared to me that the interests of the United States and of Great Britain could be greatly promoted by a nearer view of each other; and hoping that they may long enjoy a peace with each other, I am solicitous that a mutual respect should grow up, founded upon mutual knowledge.

I have ventured, also, after these suggestions, to send you

three volumes of a Review printed in Boston, and a dissertation on the Greek Language, as specimens of the real taste and spirit of this country. I ought in justice to remark, that the Review is edited by gentlemen young in life, engaged in active business, and who have scarcely a moment of leisure to devote to these pursuits. The labor, too, is voluntary, and without profit to themselves. Mr. Pickering is a lawyer, residing in the same place with myself, and engaged in full professional business. I do not send these as specimens of uncommon excellence, or as better than any thing that can be found in our country, but as the writings of men with liberal minds, who speak the views, and adapt themselves to the prevalent tastes of their own vicinity. They have the tone common to the literary men with whom they associate, common indeed to the whole nation. I hope, therefore, that I shall not be deemed obtrusive in asking your indulgent attention to these volumes, and if you shall find many deficiencies, that you will attribute them to the necessary haste in which they are composed, in hours stolen from pressing and imperious pursuits.

Nothing could afford me more pleasure than to correspond with you, as you have intimated in the close of your letter. If I can in any manner be useful to you, by gratifying any curiosity as to America, or her pursuits, I shall be most earnest to fulfil your wishes. I have long believed, (is it an idle dream?) that an interchange between the professional men of both countries, by making known their mutual opinions and decisions, would greatly tend to make permanent that harmony which is so important to the welfare of the world.

With the highest respect,

Your obedient servant,

JOSEPH STORY.

In 1819, the celebrated case of *Dartmouth College v. Woodward* (4 Wheat. R. 518) came before the Supreme Court of the United States, in which the constitution-

ality of an act of the Legislature of New Hampshire, altering the charter of the College without its consent, was considered. The opinion delivered by my father, in this case, is one of his most distinguished labors in the department of Constitutional Law. It contains an exact and thorough examination of the question whether the charter of Dartmouth College, granted by the King in the year 1769, is a contract within the meaning of the clause in the Constitution, declaring that "no State shall pass any law impairing the obligation of contracts," with an able sketch of the law relating to corporations aggregate, which is incidentally given. It was held that Dartmouth College is a private corporation, — the mere fact that it was established for purposes of general charity and public education not making it public; that its charter was a *contract* within the meaning of the Constitution; and that an act of the Legislature altering the charter, in a material respect, without the consent of the corporation, was a law "impairing the obligation of contracts," and was therefore unconstitutional and void. In this case, Chief Justice Marshall delivered a concurrent opinion, and it is interesting to compare the two judgments, as evincing the different structure of the two minds. The argument of the Chief Justice is close, logical, and compact, but somewhat hard and dry. The argument of my father is equally convincing, but far more flowing and learned. It sweeps onward like a river, ~~continually~~ increasing in power and volume, and carrying ~~on its irresistible~~ current the color and accretions of the ~~waves~~ burning through which it passes.

The following letter alludes to this case.



TO HON. JEREMIAH MASON.

Salem, October 6th, 1819.

DEAR SIR:

I am exceedingly pleased with your argument in the Dartmouth College case. I always had a desire that the question should be put upon the broad basis you have stated; and it was matter of regret that we were so stinted in jurisdiction in the Supreme Court, that half the argument could not be met and enforced. You need not fear a comparison of your argument with any in our annals.

I have just dipped into the New Hampshire Reports. They are very creditable to the Court; and in the few cases in which they differ from the Massachusetts Reports, I think your Court entirely in the right. The decision as to the cases in which judgments of other States are conclusive, agrees entirely with my own opinion, and I have never seen the reasoning better stated.

With great respect, I am, dear sir,

Your most obliged friend and servant,

JOSEPH STORY.

The following letters record the opinion entertained by two distinguished Judges of my father's judgment in the case of Dartmouth College *v.* Woodward:

TO JUDGE STORY.

January 24th, 1819.

DEAR SIR:

I return your opinion in the case of Dartmouth College, which has afforded me more pleasure than can easily be expressed. It was exactly what I had expected from you, and hope it will be adopted without alteration. What you say of the contract of marriage, is a complete answer to the difficulty made on that subject, and I am not sorry that you

have taken notice of the act of the Legislature dissolving this contract, which has been passed in this State.

As to the effect of the separation of the two countries on the charter of this College, in addition to what you say, it appears to me that its existence is admitted by the very acts which are complained of.

I am sincerely,

B. LIVINGSTON.

TO HON. JUDGE STORY.

Boston, January 9th, 1819.

DEAR SIR:

I have read your opinion with care and great pleasure. In my judgment it is supported by the principles of our constitutions, and of all free governments, as well as by the authority of adjudged cases. As one of the public, I thank you for establishing a doctrine affecting so many valuable rights and interests, with such clearness and cogency of argument, and weight of authority as must in all probability prevent its ever being again disturbed. I see nothing I should wish altered in it. I hope it will be adopted without diminution or subtraction. You have placed the subject in some strong, and to me, new lights, although I had settled my opinion on the general question years ago.

I am, very respectfully,

Your friend and servant,

WILLIAM PRESCOTT.

The following letter from my father was written at this time:—

TO STEPHEN WHITE, ESQ.

Washington, March 3d, 1819.

MY DEAR BROTHER:

. . . For more than a week last past, we have been engaged in the cause of *Maryland v. The Bank of the United*

States, on the question of the right of a State to tax the bank. Mr. Pinkney rose on Monday to conclude the argument; he spoke all that day and yesterday, and will probably conclude to-day. I never, in my whole life, heard a greater speech; it was worth a journey from Salem to hear it; his elocution was excessively vehement, but his eloquence was overwhelming. His language, his style, his figures, his arguments, were most brilliant and sparkling. He spoke like a great statesman and patriot, and a sound constitutional lawyer. All the cobwebs of sophistry and metaphysics about State rights and State sovereignty he brushed away with a mighty besom. We have had a crowded audience of ladies and gentlemen; the hall was full almost to suffocation, and many went away for want of room. I fear that this speech will never be before the public, but if it should be, it will attract universal admiration. Mr. Pinkney possesses, beyond any man I ever saw, the power of elegant and illustrative amplification. . . .

God bless you and your family.

Most affectionately, your friend and brother,

JOSEPH STORY.

Of the decision in this case, which, under the name of *McCulloch v. The State of Maryland*, is reported in the fourth volume of Wheaton's Reports, p. 316, he says, in a letter to my mother, dated March 7th, 1819,—

“ We have decided the great question as to the right of the States to tax the Bank of the United States, and have declared that they have no such power. This decision excites great interest, and in a political view is of the deepest consequence to the nation. It goes to establish the Constitution upon its great original principles. You, perhaps, from your retired life, may hardly think it possible that such should be the case, but if you mingled with the busy circles of politics,



or took an interest in the objects of governments and statesmen, you would readily admit its fundamental importance to the existence of the government."

During this year one thousand dollars were added to the salary of the Judges of the Supreme Court, making it four thousand five hundred dollars per annum. The following letter alludes to this fact:—

TO STEPHEN WHITE, ESQ.

Washington, February 17th, 1819.

MY DEAR BROTHER:

. . . Congress have passed the act increasing the salaries of the Heads of Departments and the Judges of the Supreme Court; the act will without doubt be signed by the President, and it is most satisfactory to me to know that hereafter my salary will be such as to make me feel easy in respect to the future increase of my family. It relieves my mind from those anxious cares, which I have so long indulged, as to the future situation of my family, and I hope now to be able to lay up some funds for the support of my wife and children, if I should be unfortunately taken from them.

We have already decided several great constitutional questions, and several are now before us. This morning the Court pronounced its opinion in the case of *Sturgis v. Crowninshield*, and decided that an insolvent act of the State of New York, which discharged the debtor (*Crowninshield*) from all his debts, was unconstitutional and void. All the Judges, except Judge Livingston, concurred in this opinion. It will have a most important bearing upon the fate of the bankrupt act now before Congress, and will probably hasten its passage. If so, God speed the act! If you look into the *National Intelligencer*, you will see the exact points decided.

I doubt very much whether the new Circuit Court bill will pass. The great objections to it are, that the Judges of the

Supreme Court will not any longer visit the States, and be conversant in jury trials; and that there is danger also in the present times, that the new Judges will be exclusively selected from the Republican party. Both these motives will probably induce the great bulk of the Federalists to vote against it, and among the Republicans, it is well known there are many hostile in the highest degree to any scheme, which changes or gives more effect to the jurisdiction of the Courts of the United States; so that the bill will, between these opposing parties, fall to the ground. For myself, I am very indifferent about it; and my Circuit is not only not unpleasant to me, but is greatly preferable to a second annual journey to Washington.

The negotiations are still going on between our Government and Spain, and it is generally believed that the two Governments have almost come to an agreement. It is hourly expected that a treaty will be signed, which will be entirely satisfactory to both parties. It will include a cession of Florida. I have it from the best authority, that such a treaty is in an amicable train, and is confidently expected. At all events, there is not the slightest danger of a war with Spain. Under the existing circumstances, the Government are perfectly satisfied, that the peace never was more secure with Spain. And it is known, that the European powers have no intention by force to compel the colonies of Spain to acknowledge the sovereignty of the mother country. . . .

In great haste, I am

Your affectionate friend and brother,

JOSEPH STORY.

The following letters were written at this time to Mr. Greenleaf on the occasion of his projecting the publication of a volume of Overruled Cases, and a new edition of Hobart's Reports, with notes. My father was accustomed to make a record of all the overruled cases he

met with in his reading, and this was the list referred to as having been sent to Mr. Tyng.

TO SIMON GREENLEAF, ESQ.

Salem, September 5th, 1819.

DEAR SIR:

I have the pleasure to acknowledge your letter of yesterday. The list of cases, which I sent to Mr. Tyng, is perfectly at your service; and if I can give the least aid to your meritorious undertaking, I most cheerfully proffer it to you. Since I handed Mr. Tyng the list of cases, I have kept a supplemental one of those occurring in my reading; and I will continue to do so, and transmit it to you whenever you may think it most advisable. It is of great importance to the profession to have the list as complete as possible, and I could wish that you could find leisure to extend your examination backward to the time of Dyer. There are a good many cases in the time between Dyer and Lord Raymond, (which may be properly called the middle age of the law,) in respect to which one hardly knows what to say. They have been doubted and denied, and then again supported and qualified; and in some instances there is a string of cases each way, so that it is difficult to say, which is the best authority.

I am glad that you propose republishing Hobart's Reports with annotations. I have mentioned that work for several years past to lawyers as a very excellent subject of commentary. Many of the cases were well considered, and most of them admit of copious illustrations. And here again let me say, that if in the progress of your inquiries or annotation, I can be of any use to clear doubt, or to search for an authority not within your reach, my services are entirely free to you.

I rejoice that there are gentlemen of the Bar who are willing to devote their leisure to the correction and ministration of the noble science of the law. It is redeeming the pledge,



which Lord Coke seems to think every man implicitly grants to his profession on entering it. It is eminently useful, because it accustoms lawyers to reason upon principle, and to pass beyond the narrow boundary of authority. I think you would do well to give public notice of your being engaged in this undertaking, as other gentlemen may otherwise engage in the same project.

With great respect, I am, dear sir,

Your obliged friend and servant,

JOSEPH STORY.

TO SIMON GREENLEAF, ESQ.

Salem, November 11th, 1819.

DEAR SIR:

I had the pleasure of receiving your letter of the 6th instant by this morning's mail. Since preparing the list of cases, which I handed to Mr. Tyng, I have continued to keep a supplemental list of cases occurring in my reading. This I will transmit to you when you shall express your wishes on the subject. The longer I hold it, the more ample it will be.

In preparing my list, I have not thought it worth while to state the language of the Court, where the whole case was directly overruled. Where the doctrine was shaken, or impugned only as to a single point, I have always stated it. Sometimes the Court have commented on a case very much at large, intimating doubt of it, but so mixing up their remarks, that it was difficult to detach them from the case. In this predicament, I have stated the result as concisely as possible, and just such as it appeared to me to be.

I am very ready, however, to state the remarks of the Court at large in all cases, if you think it will be more useful. Some of the cases are, however, mere points of practice, where little more appears than that the case is overruled.

I have not kept a copy of the list which Mr. Tyng handed

you; but if you will transmit a copy to me, I will add all the remarks and suggestions of the Court.

I am, dear sir,

Your very respectful and obedient friend,

JOSEPH STORY.

The following letter was in answer to one from Chancellor Kent, highly complimentary in its character:—

TO HON. CHANCELLOR KENT.

Salem, August 21st, 1819.

DEAR SIR:

I had the pleasure of receiving by Mr. Webster your kind and flattering letter, and I need hardly say how much I was gratified by your approbation. I assure you that the esteem for me, which you are pleased to express, is most fully and sincerely reciprocated. If in my judicial labors there is aught worthy of the regard of learned jurists, it is probably more owing to the bright example which you placed before me, of extensive erudition, unwearied diligence, and liberal jurisprudence, than to all other causes. At an early period of my professional life, I read the New York Reports with zeal and care, and I felt how much you had contributed to enlarge our commercial law, by liberal drafts from the civil law and foreign jurists; and our common law, by a habit of tracing every principle to its original foundations, through all the shifting authorities. My ambition was stimulated to follow in the path pointed out by yourself, and your continued perseverance has cheered me on my way, under circumstances of no ordinary discouragement. In truth, nothing is more difficult than to preserve in the profession a steady spirit of original investigation, and to unite a deep respect for authorities with an habitual inquiry into their consonance with principles. May I venture to say that in my judgment, no person living has a more just title to this praise

than yourself, and it ought to be some consolation, that you have instructed so many of us that the gift, however rare, is not unattainable.

The reasons, which you have assigned for declining to review the Dartmouth College case, are entirely satisfactory to me. My wish was that you should review it, not for the purpose of commending the Court or counsel, but from a higher motive, to lay before the public in a popular shape, the vital importance to the wellbeing of society, and the security of private rights, of the principles on which that decision rested. Unless I am very much mistaken, these principles will be found to apply with an extensive reach to all the great concerns of the people, and will check any undue encroachments upon civil rights, which the passions or the popular doctrines of the day may stimulate our State Legislatures to adopt.

I read your Chancery decisions with the greatest pleasure and instruction. This is a branch of law in which, as you may well suppose, from the want of State Chancery Courts in my circuit to aid my studies and reduce my investigations to practice, I must necessarily be very deficient. I endeavor, however, by diligent reading, to accomplish whatever I can. But the practice of a Court is almost indispensable, to ensure any degree of accuracy. In short, the exact bearings of rules and principles can scarcely be felt or defined, until by constant practice in actual business, we are able to perceive the shifting lights of which they are susceptible. I make it a rule in my circuit to adopt the practice of your Court wherever it can be applied; and I hope hereafter to build up, if I can awaken the ardor of the Bar, a system of Chancery Jurisprudence for the States included in my circuit. To you we shall be most deeply indebted, and from your Reports we shall draw most amply.

Mr. Ogden did me the favor to send me a copy of your opinion in the Court of Errors in Waddington's case, (16 Johnson's R. 428.) I scarcely know in what terms to express to you my opinion of its merits. I had thought the subject



almost exhausted before, but you have thrown a flood of new light on it. Will you allow me to say, that for depth and accuracy of research, and acuteness, I think that opinion unrivalled in the annals of English and American Jurisprudence. Before I read it, I had thought that war only *suspended* the contract of partnership; you have entirely satisfied me that it *dissolves* it.

I see by 15 Johnson's Reports, that the Court have reversed your decision in *Riggs v. Murray*. I do not profess to have examined that case with minute diligence, but as at present advised, *ego assentior Scævola*, I go with the Chancellor in all his principles.

It will afford me the greatest pleasure to correspond with you at your leisure hours, which I know are few and scattered; but do not entrench on your time on my account, and consider that if I get but a letter a year, I shall esteem it a great favor.

I am, with the highest respect,

Your most obliged friend and servant,

JOSEPH STORY.

The remaining leaf of a journal, which he seems to have begun at this time, but which he afterwards destroyed, has the following affecting record of the death of his daughter Caroline:—

“What a melancholy interval, since I last wrote; a year is elapsed, and nothing is recorded.

“On Thursday, the 1st day of April, 1819, at ten o'clock in the evening, died my dear little daughter Caroline Wetmore Story, aged six years. This day (the 4th) is her birth-day. But she is gone forever. She was a most kind, affectionate, and intelligent child, and had endeared herself to me by a thousand ties. She continued cheerful, affectionate, and interesting to the last; I never saw a more delicate, chaste, and

modest being. She seemed instinctively to shrink from every thing which might expose the frailties of our nature. Her intellectual powers were great; her desire of knowledge insatiable; and her curiosity rapid and perpetually alive. We were obliged to restrain her ardor for knowledge, lest the exertion should be unfavorable to her health; and yet, child as she was, she manifested at every turn a penetrating intellect. I dwell however with most satisfaction, if that may be so called, which is but a deep and melancholy recollection, on her gentleness, her unbounded love for her parents, her affectionate tenderness to her friends, and her gratitude for all the kindness which she received. It is a consolation, a melancholy consolation, that until within a few days of her death, she was able to relish the pleasures of her age; that she was cheerful, and having no fears of the future, happy. In her last sickness, she suffered but little pain; her principal difficulties arose from extreme debility and exhaustion. She died perfectly sensible to the last. A moment before, she asked her Aunt Hester to lift her up higher in the bed, and immediately sunk away into a gentle sleep, holding her aunt's hand until she had ceased to breathe. . . .

"The dear little child, however, had no dread of death, for she knew nothing of it. It was a blessing. Her ignorance was bliss. Would to God my exit might be as calm, as sweet, as pure as hers. Life daily loses its charms in my eyes; I feel less and less the power of its pleasures, and even when I struggle most to mingle with the business of life, I often feel my heart sink within me. It requires no ordinary effort now even to brace myself up to perform my duties. Yet with the world, I dare say, I pass for a cheerful man, and so I am; but my cheerfulness is the effect of labor and exertion to fly from melancholy recollections, and to catch at momentary joy. While we live we are bound to do all the good we can; life was not meant to be passed in gloom; yet how difficult is the task to act up to duty in this respect. He who feels that he has but a short hold upon life, (and

the wisdom for distinc-  
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 and his doings are  
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 in competence, and  
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## CHAPTER XI.

### SLAVERY AND THE SLAVE TRADE.

THE SLAVE TRADE IN THE UNITED STATES—HIS FEELINGS IN REGARD TO IT—HIS JUDICIAL CHARGES TO THE GRAND JURIES AGAINST IT—THEIR EFFECT—EXTRACT FROM ONE—THE CASE OF LA JEUNE EUGÈNE—EXTRACT FROM THE JUDGMENT DECLARING THE SLAVE TRADE TO BE AGAINST THE LAW OF NATIONS—THE MISSOURI QUESTION—SPEECH AGAINST SLAVERY IN THE TERRITORIES, AND AGAINST THE ADMISSION OF NEW SLAVE STATES INTO THE UNION—LETTERS ON THE SAME SUBJECT.

It was at this time that my father's attention became directed to the slave trade. In the course of his circuits, he had learned, that although prohibited alike by law and by humanity, it was still carried on to a considerable extent in the various seaports of the New England States; and that the fortunes of many men of prominence were secretly invested in its infamous traffic. The conscience of the North was then less sensitive on this subject than it now is. Slavery itself had hardly disappeared in New England, and the slave trade was winked at. A man might still have a position in society, and claim consideration as a gentleman, nay as a Christian, while his ships were freighted with human cargoes, and his commerce was in the blood and pain of his fellow creatures. The practice was publicly and abstractly inveighed against; but it was secretly and practically indulged in. The chances of great fortunes in that

trade, inflamed the cupidity and deadened the consciences of men among the States of my father's circuit. This was especially the case in Rhode Island, which lying furthest South, where slavery, "like a mildewed ear blasted its wholesome brother," was exposed to more temptation, and had larger conveniences for carrying on the trade than the more Northern States. It is notorious, that many large fortunes there and elsewhere, were the blood-money of the slave trade, and owed their existence to the wretched cargoes which survived the horrors of the middle passage.

The indignation of my father was fired by these atrocities. Outraged humanity, justice, and the statutes of the land called him to assail judicially this traffic; to visit it with the utmost penalties of the law; to brand it with infamy, and to sweep it from the shores it tainted. Seizing the opportunity afforded by his annual charge to the Grand Juries on his Circuit, he denounced it in the severest terms. The power and earnestness of his appeals on these occasions show how deeply his heart was in the matter.

In a charge, which he delivered before the Grand Jury of the Circuit Court, at the October Term of the year 1819, in Boston, and at the November Term of the same year, in Providence, after commenting upon the the crime of piracy, he proceeds, —

"And in the next place, gentlemen, let me call your attention to that most detestable traffic, the slave trade.

"The existence of slavery under any shape is so repugnant to the natural rights of man and the dictates of justice, that it seems difficult to find for it any adequate justification. It

undoubtedly had its origin in times of barbarism, and was the ordinary lot of those who were conquered in war. It was supposed that the conqueror had a right to take the life of his captive, and by consequence might well bind him to perpetual servitude. But the position itself on which this supposed right is founded is not true. No man has a right to kill his enemy, except in cases of absolute necessity; and this absolute necessity ceases to exist even in the estimation of the conqueror himself, when he has spared the life of his prisoner. And even, if in such case it were possible to contend for the right of slavery, as to the prisoner himself, it is impossible that it can justly extend to his innocent offspring through the whole line of descent. I forbear, however, to touch on this delicate topic, not because it is not worthy of the most deliberate attention of all of us; but it does not properly fall within my province on the present occasion. It is to be lamented, indeed, that slavery exists in any part of our country; but, it should be considered, that it is not an evil introduced in the present age. It has been entailed upon a part of our country by their ancestors; and to provide a safe and just remedy for its gradual abolition, is undoubtedly as much the design of many of the present owners of slaves, as of those philanthropists who have labored with so much zeal and benevolence to effect their emancipation. It is, indeed, one of the many blessings which we have derived from Christianity, that it prepared the way for a gradual abolition of slavery, so that at the close of the twelfth century it was greatly diminished in the west of Europe; and it is one of the stains on the human character, that the revival of letters and of commerce brought with it an unnatural lust of gain, and with it the plunder and slavery of the wretched Africans.

“To our country belongs the honor, as a nation, of having set the first example of prohibiting the further progress of this inhuman traffic. The Constitution of the United States, having granted to Congress the power to regulate foreign



commerce, imposed a restriction for a limited period, upon its right of prohibiting the migration or importation of slaves. Notwithstanding this, Congress with a promptitude, which does honor to their humanity and wisdom, proceeded, in 1794, to pass a law to prohibit the traffic of slaves by our citizens in all cases not within the reach of the constitutional restriction, and thus cut off the whole traffic between foreign ports. In the year 1800, an additional law was passed to enforce the former enactments; and in the year 1807, (the epoch when the constitutional restriction was to cease, beginning with the ensuing year,) a general prohibition of the traffic, as well in our domestic as foreign trade, was proudly incorporated into our statute book. About the same period, the British government, after the most severe opposition from slave dealers and their West Indian friends, achieved a similar measure, and enacted a general prohibition of the trade, as well to foreign ports as to their colonies. This act was indeed the triumph of virtue, of reason, and of humanity over the hardheartedness of avarice; and while it was adorned by the brilliant talents of Pitt, Fox, Romilly, and Wilberforce, let us never forget that its success was principally owing to the modest but persevering labors of the Quakers, and above all to the resolute patience and the noble philanthropy of a man immortalized by his virtues, the intrepid Thomas Clarkson.

“ It is a most cheering circumstance, that the examples of the United States and Great Britain in thus abolishing the Slave Trade, have, through the strenuous exertions of the latter, been generally approved throughout the continent of Europe. The government of Great Britain has indeed employed the most indefatigable and persevering diligence to accomplish this desirable object; and treaties have been made by her with all the principal foreign powers, providing for a total abolition of the trade within a very short period. May America not be behind her in this glorious work; but by a generous competition in virtuous deeds restore the

degraded African to his natural rights, and strike his manacles from the bloody hands of his oppressors.

“By our laws it is made an offence for any person to import or bring, in any manner whatsoever, into the United States, or its territories, from any foreign country, any negro, mulatto, or person of color with intent to hold, sell, or dispose of him as a slave, or to be held to service or labor. It is also made an offence for any citizen or other person as master, owner, or factor, to build, fit, equip, load or otherwise prepare any vessel in any of our ports, or to cause any vessel to sail from any port whatsoever for the purpose of procuring any negro, mulatto, or person of color from any foreign country to be transported to any port or place whatsoever, to be held, sold, or disposed of, as a slave, or to be held to service or labor. It is also made an offence for any citizen or other person resident within our jurisdiction to take on board, receive or transport in any vessel from the coast of Africa or any other foreign country, or from sea, any negro, mulatto, or person of color not an inhabitant of, or held to service in the United States, for the purpose of holding, selling, or disposing of such person as a slave, or to be held to service or labor. It is also made an offence for any person within our jurisdiction to hold, purchase, sell, or otherwise dispose of any negro, mulatto, or person of color for a slave, or to be held to service or labor, who shall have been imported into the United States in violation of our laws; and in general, the prohibitions in these cases extend to all persons who shall abet or aid in these illegal designs. These offences are visited as well with severe pecuniary and personal penalties, as with the forfeiture of the vessels and their equipments, which have been employed in the furtherance of these illegal projects; and in general, a moiety of the pecuniary penalties and forfeitures is given to any person who shall inform against the offenders and prosecute them to conviction. The President of the United States is also authorized to employ our armed vessels and revenue cutters to cruise on the seas for the purpose of



arresting all vessels and persons engaged in this traffic in violation of our law; and bounties, as well as a moiety of the captured property, are given to the captors to stimulate them in the discharge of their duty.

“Under such circumstances it might well be supposed that the slave trade would in practice be extinguished; that virtuous men would, by their abhorrence, stay its polluted march, and wicked men would be overawed by its potent punishment. But unfortunately the case is far otherwise. We have but too many melancholy proofs from unquestionable sources, that it is still carried on with all the implacable ferocity and insatiable rapacity of former times. Avarice has grown more subtle in its evasions; it watches and seizes its prey with an appetite quickened rather than suppressed by its guilty vigils. American citizens are steeped up to their very mouths (I scarcely use too bold a figure) in this stream of iniquity. They throng to the coasts of Africa under the stained flags of Spain and Portugal, sometimes selling abroad “their cargoes of despair,” and sometimes bringing them into some of our southern ports, and there, under the forms of the law, defeating the purposes of the law itself, and legalizing their inhuman but profitable adventures. I wish I could say that New England and New England men were free from this deep pollution. But there is some reason to believe, that they who drive a loathsome traffic, ‘and buy the muscles and the bones of men,’ are to be found here also. It is to be hoped the number is small; but our cheeks may well burn with shame while a solitary case is permitted to go unpunished.

“And, gentlemen, how can we justify ourselves or apologize for an indifference to this subject? Our constitutions of government have declared, that all men are born free and equal, and have certain unalienable rights, among which are the right of enjoying their lives, liberties, and property, and of seeking and obtaining their own safety and happiness. May not the miserable African ask, ‘Am I not a man and



a brother?' We boast of our noble struggle against the encroachments of tyranny, but do we forget that it assumed the mildest form in which authority ever assailed the rights of its subjects; and yet that there are men among us who think it no wrong to condemn the shivering negro to perpetual slavery?

"We believe in the Christian religion. It commands us to have good will to all men; to love our neighbors as ourselves, and to do unto all men as we would they should do unto us. It declares our accountability to the Supreme God for all our actions, and holds out to us a state of future rewards and punishments as the sanction by which our conduct is to be regulated. And yet there are men calling themselves Christians, who degrade the negro by ignorance to a level with the brutes, and deprive him of all the consolations of religion. He alone of all the rational creation, they seem to think, is to be at once accountable for his actions, and yet his actions are not to be at his own disposal; but his mind, his body, and his feelings are to be sold to perpetual bondage. To me it appears perfectly clear, that the slave trade is equally repugnant to the dictates of reason and religion, and is an offence equally against the laws of God and man. Yet, strange to tell, one of the pretences upon which the modern slavery of the Africans was justified, was the 'duty of converting the heathen.'

"I have called this an inhuman traffic, and, gentlemen, with a view to enlist your sympathies as well as your judgments in its suppression, permit me to pass from these cold generalities to some of those details, which are the ordinary attendants upon this trade. Here, indeed, there is no room for the play of imagination. The records of the British Parliament present us a body of evidence on this subject, taken with the most scrupulous care, while the subject of the abolition was before it; taken too from persons who had been engaged in, or eye witnesses, of the trade; taken, too, year after year, in the presence of those whose interests or passions

were most strenuously engaged to oppose it. That it was not contradicted or disproved, can only be accounted for upon the ground, that it was the truth and nothing but the truth. What, therefore, I shall briefly state to you on this subject, will be drawn principally from those records; and I am free to confess that, great as was my detestation of the trade, I had no conception, until I recently read an abstract of this evidence, of the vast extent of misery and cruelty occasioned by its ravages. And if, gentlemen, this detail shall awaken your minds to the absolute necessity of constant vigilance in the enforcement of the laws on this subject, we may hope that public opinion, following these laws, will very soon extirpate the trade among our citizens.

“The number of slaves taken from Africa in 1768 amounted to one hundred and four thousand; and though the numbers somewhat fluctuated in different years afterwards, yet it is in the highest degree probable that the average, until the abolition, was not much below one hundred thousand a year. England alone, in the year 1786, employed one hundred and thirty ships, and carried off about forty-two thousand slaves.

The unhappy slaves have been divided into seven classes. The most considerable, and that which contains at least half of the whole number transported, consists of kidnapped people. This mode of procuring them includes every species of treachery and knavery. Husbands are stolen from their wives, children from their parents, and bosom friends from each other. So generally prevalent are these robberies, that it is a first principle of the natives not to go unarmed, while a slave ship is on the coast, for fear of being stolen. The second class of slaves, and that not inconsiderable, consists of those, whose villages have been depopulated for obtaining them. The parties employed in these predatory expeditions go out at night, set fire to the villages, which they find, and carry off the wretched inhabitants, thus suddenly thrown into their power as slaves. The practice is indeed so common,



that the remains of deserted and burnt villages are everywhere to be seen on the coast.

"The third class of slaves consists of such persons as are said to have been convicted of crimes, and are sold on this account for the benefit of their kings; and it is not uncommon to impute crimes to them falsely, and to bring on mock trials, for the purpose of bringing them within the reach of the royal traders.

"The fourth class includes prisoners of war, captured sometimes in ordinary wars, and sometimes in wars originated for the very purposes of slavery.

"The fifth class comprehends those who are slaves by birth; and some traders on the coast make a practice of breeding from their own slaves, for the purpose of selling them, like cattle, when they are arrived at a suitable age. The sixth class comprehends such as have sacrificed their liberty to the spirit of gaming; and the seventh and last class, of those, who, being in debt, are seized according to the laws of the country, and sold to their creditors. The two last classes are very inconsiderable, and scarcely deserve mention.

"Having lost their liberty in one of the ways already mentioned, the slaves are conveyed to the banks of the rivers or sea-coast. Some belong to the neighborhood; others have lived in distant parts; and others are brought a thousand miles from their homes. Those who come from a distance march in droves or caufles, as they are called. They are secured from rising or running away by pieces of wood, which attach the necks of two and two together; or by other pieces, which are fastened by staples to their arms. They are made to carry their own water and provisions, and are watched and followed by drivers, who by force compel the weak to keep up with the strong.

"They are sold immediately upon their arrival on the rivers or coast, either to land factors, at *depots* for that purpose, or directly to the ships engaged in the trade. They are then carried in boats to the various ships, whose captains have pur-



chased them. The men are immediately confined two and two together, either by the neck, leg, or arm, with fetters of solid iron. They are then put into their apartments, the men occupying the forepart, the women the afterpart, and the boys the middle of the vessel. The tops of these apartments are grated for the admission of light and air; and the slaves are stowed like any other lumber, occupying only an allotted portion of room. Many of them, while the ships are waiting for their full lading in sight of their native shore, manifest great appearance of distress and oppression; and some instances have occurred where they have sought relief by suicide, and others where they have been afflicted with delirium and madness. In the daytime, if the weather be fine, they are brought upon deck for air. They are placed in a long row of two and two together, on each side of the ship; a long chain is then made to pass through the shackles of each pair, and by this means each row is secured to the deck. In this state they eat their miserable meals, consisting of horse beans, rice, and yams, with a little pepper and palm oil. After their meals, it is a custom to make them jump for exercise as high as their fetters will allow them; and if they refuse, they are whipped until they comply. This, the slave merchants call dancing, and it would seem literally to be the dance of death.

“When the number of slaves is completed, the ships begin what is called the middle passage, to transport the slaves to the colonies. The height of the apartments in the ships is different according to the size of the vessel, and is from six feet to three feet, so that it is impossible to stand erect in most of the vessels, and in some scarcely to sit down in the same posture. If the vessel be full, their situation is truly deplorable. In the best regulated ships, a grown person is allowed but sixteen inches in width, thirty-two inches in height, and five feet eleven inches in length, or to use the expressive language of a witness, not so much room as a man has in his coffin. They are indeed so crowded below,

that it is almost impossible to walk through the groups without treading on some of them ; and if they are reluctant to get into their places they are compelled by the lash of a whip. And here their situation becomes wretched beyond description. The space between decks where they are confined, often becomes so hot, that persons who have visited them there have found their shirts so wet with perspiration that water might be wrung from them ; and the steam from their confined bodies comes up through the gratings like a furnace. The bad effects of such confinement and want of air are soon visible in the weakness and faintness, which overcomes the unhappy victims. Some go down apparently well at night, and are found dead in the morning. Some faint below, and die from suffocation before they can be brought upon deck. As the slaves, whether well or ill, always lie upon bare planks, the motion of the ship rubs the flesh from the prominent parts of their body and leaves their bones almost bare. The pestilential breath of so many, in so confined a state, renders them also very sickly, and the vicissitudes of heat and cold generate a flux ; when this is the case, (which happens frequently,) the whole place becomes covered with blood and mucus like a slaughter house, and as the slaves are fettered and wedged close together, the utmost disorder arises from endeavors to relieve themselves in the necessities of nature ; and the disorder is still further increased by the healthy being not unfrequently chained to the diseased, the dying, and the dead ! When the scuttles in the ship's sides are shut in bad weather, the gratings are not sufficient for airing the room, and the slaves are then seen drawing their breath with all that anxious and laborious effort for life, which we observe in animals subjected to experiments in foul air, or in the exhausted receiver of an air pump. Many of them expire in this situation, crying out in their native tongue,—‘ We are dying.’ During the time that elapses from the slaves being put on board on the African coast to their sale in the colonies, about one fourth part, or twenty-five thousand per annum, are de-

stroyed, a mortality which may be easily credited after the preceding statement.

"At length the ship arrives at her destined port, and the unhappy Africans, who have survived the voyage, are prepared for sale. Some are consigned to brokers, who sell them for the ships at private sale. With this view they are examined by the planters, who want them for their farms, and in the selection of them, friends and relations are parted without any hesitation; and when they part with mutual embraces, they are severed by a lash. Others are sold at public auction, and become the property of the highest bidder. Others are sold by what is denominated a 'scramble.' In this case, the main and quarter decks of the ship are darkened by sails hung over them at a convenient height. The slaves are then brought out of the hold and made to stand in the darkened area. The purchasers, who are furnished with long ropes, rush at a given signal within the awning, and endeavor to encircle as many of them as they can.

"Nothing can exceed the terror which the wretched Africans exhibit on these occasions. A universal shriek is immediately heard; all is consternation and dismay; the men tremble, the women cling together in each other's arms; some of them faint away, and others are known to expire.

"About twenty thousand, or one fifth part of those who are annually imported, die during the 'seasoning,' which seasoning is said to expire when the two first years of servitude are completed. So that, of the whole number, about one half perish within two years from their first captivity. I forbear to trace the subsequent scenes of their miserable lives, worn out in toils, from which they can receive no profit, and oppressed with wrongs from which they can hope for no relief.

"The scenes which I have described are almost literally copied from the most authentic and unquestionable narratives published under the highest authority. They present a picture of human wretchedness and human depravity, which



the boldest imagination would hardly have dared to portray, and from which, one should think, the most abandoned profligate would shrink with horror. Let it be considered, that this wretchedness does not arise from the awful visitations of Providence, in the shape of plagues, famines, or earthquakes, the natural scourges of mankind; but is inflicted by man on man from the accursed love of gold. May we not justly dread the displeasure of that Almighty being, who is the common father of us all, if we do not by all means within our power endeavor to suppress such infamous cruelties. If we cannot, like the good Samaritan, bind up the wounds and soothe the miseries of the friendless Africans, let us not, like the Levite, pass with sullen indifference on the other side. What sight can be more acceptable in the eyes of heaven, than that of good men struggling in the cause of oppressed humanity? What consolation can be more sweet in a dying hour, than the recollection that at least one human being may have been saved from sacrifice by our vigilance in enforcing the laws?

“I make no apology, gentlemen, for having detained you so long upon this interesting subject. In vain shall we expend our wealth in missions abroad for the promotion of Christianity; in vain shall we rear at home magnificent temples to the service of the Most High; if we tolerate this traffic, our charity is but a name, and our religion little more than a faint and delusive shadow.”

This charge produced no small sensation at the places where it was delivered. It roused at once the passions and the fears of those engaged in the slave trade. It quickened the consciences of many who had stood idly by and suffered the iniquity in silence, — and it wounded the false honor and pride of others. It was then so new and bold an act to denounce the slave trade, and to affix to it its true stigma, that even many who opposed

it, deemed, nevertheless, that the tone of the charge was not only exaggerated, but unbecoming the place from which it was delivered. The newspapers of the day publicly denounced my father; and one among them in Boston, declared, that any Judge who should deliver such a charge, ought to be "hurled from the Bench." This, like all popular clamors, blew by him like the empty wind upon a rock. He had made up his mind that it was his duty, judicially and morally, to exert his utmost powers to procure the annihilation of this trade, and nothing availed to check him. He delivered and redelivered this charge. He printed and circulated it, and steadily bore his testimony against the slave trade, as repugnant to law, religion, and humanity. So strong was his influence, that, mainly owing to the change wrought by his efforts in public opinion, the last remnants of the slave trade were rooted from the New England States, and a sounder public sentiment was created on the subject.

But it was not only in solemn charges to the Grand Jury that he bore his testimony against the slave trade. In an important case, (*La Jeune Eugénie*, 2 Mason's R. 90,) which occurred in his circuit in 1822, he branded it as a violation of the Law of Nations. As this remarkable decision contains a full and careful exposition of his views on this subject, I shall slightly anticipate the chronological order of these memoirs, by referring to it in this place.

*La Jeune Eugénie*, was a vessel, sailing under a French flag and papers, which was captured by the American armed schooner, *Alligator*, on the western coast of Africa, on suspicion of being engaged in the



slave trade, and brought into the port of Boston, where she was libelled as an American vessel. The questions which arose in the case, were, — first, whether she was an American vessel, — second, whether she was engaged in the slave trade, — third, whether if she were French and engaged in the slave trade, the Court was bound to restore the property to France, without further inquiry. In the course of the judgment, the right of visitation, search, and seizure, is discussed and asserted; but the great point of the case was that which arose under the third question, whether the African slave trade was contrary to the law of nations. It was held to be so, on the ground that it carried with it “a breach of all the moral duties, of all the maxims of justice, mercy, and humanity, and of the admitted rights which Christian nations now hold sacred in their intercourse with each other.” On this point the Judgment proceeds as follows, —

“And the first question naturally arising out of the asserted facts is, whether the African slave trade be prohibited by the law of nations; for, if it be so, it will not, I presume, be denied, that confiscation of the property ought to follow; for that is the proper penalty denounced by that law for any violation of its precepts; and the same reasons, which enforce that penalty ordinarily, apply with equal force to employment in this trade.

“I shall take up no time in the examination of the history of slavery, or of the question, how far it is consistent with the natural rights of mankind. That it may have a lawful existence, at least by way of punishment for crimes, will not be doubted by any persons, who admit the general right of society to enforce the observance of its laws by adequate penalties. That it has existed in all ages of the world, and



has been tolerated by some, encouraged by others, and sanctioned by most, of the enlightened and civilized nations of the earth in former ages, admits of no reasonable question. That it has interwoven itself into the municipal institutions of some countries, and forms the foundation of large masses of property in a portion of our own country, is known to all of us. Sitting, therefore, in an American Court of Judicature, I am not permitted to deny, that under some circumstances it might have a lawful existence; and that the practice may be justified by the condition, or wants, of society, or may form a part of the domestic policy of a nation. It would be unbecoming in me here to assert, that the state of slavery cannot have a legitimate existence, or that it stands condemned by the unequivocal testimony of the law of nations.

“But this concession carries us but a very short distance towards the decision of this cause. It is not, as the learned counsel for the Government have justly stated, on account of the simple fact, that the traffic necessarily involves the enslavement of human beings, that it stands reprehended by the present sense of nations; but that it necessarily carries with it a breach of all the moral duties, of all the maxims of justice, mercy, and humanity, and of the admitted rights, which independent Christian nations now hold sacred in their intercourse with each other. What is the fact as to the ordinary, nay, necessary course, of this trade? It begins in corruption, and plunder, and kidnapping. It creates and stimulates unholy wars for the purpose of making captives. It desolates whole villages and provinces for the purpose of seizing the young, the feeble, the defenceless, and the innocent. It breaks down all the ties of parent, and children, and family, and country. It shuts up all sympathy for human suffering and sorrows. It manacles the inoffensive females and the starving infants. It forces the brave to untimely death in defence of their humble homes and firesides, or drives them to despair and self-immolation. It stirs

up the worst passions of the human soul, darkening the spirit of revenge, sharpening the greediness of avarice, brutalizing the selfish, envenoming the cruel, famishing the weak, and crushing to death the broken-hearted. This is but the beginning of the evils. Before the unhappy captives arrive at the destined market, where the traffic ends, one quarter part at least, in the ordinary course of events, perish in cold blood under the inhuman, or thoughtless treatment of their oppressors.

"Strong as these expressions may seem, and dark as is the coloring of this statement, it is short of the real calamities inflicted by this traffic. All the wars, that have desolated Africa for the last three centuries, have had their origin in the slave trade. The blood of thousands of her miserable children has stained her shores, or quenched the dying embers of her desolated towns, to glut the appetite of slave dealers. The ocean has received in its deep and silent bosom thousands more, who have perished from disease and want during their passage from their native homes to the foreign colonies. I speak not from vague rumors, or idle tales, but from authentic documents, and the known historical details of the traffic, — a traffic, that carries away at least 50,000 persons annually from their homes and their families, and breaks the hearts, and buries the hopes, and extinguishes the happiness of more than double that number. 'There is,' as one of the greatest of modern statesmen has declared, 'something of horror in it, that surpasses all the bounds of imagination.'

"It is of this traffic, thus carried on, and necessarily carried on, beginning in lawless wars, and rapine, and kidnapping, and ending in disease, and death, and slavery, — it is of this traffic in the aggregate of its accumulated wrongs, that I would ask, if it be consistent with the law of nations? It is not by breaking up the elements of the case into fragments, and detaching them one from another, that we are to be asked of each separately, if the law of nations prohibits it. We are not to be told, that war is lawful, and slavery lawful,

and plunder lawful, and the taking away of life is lawful, and the selling of human beings is lawful. Assuming that they are so, under circumstances, it establishes nothing. It does not advance one jot to the support of the proposition, that a traffic, that involves them all, that is unnecessary, unjust, and inhuman, is countenanced by the eternal law of nature, on which rests the law of nations.

“ Now the law of nations may be deduced, first, from the general principles of right and justice, applied to the concerns of individuals, and thence to the relations and duties of nations; or, secondly, in things indifferent or questionable, from the customary observances and recognitions of civilized nations; or, lastly, from the conventional or positive law, that regulates the intercourse between States. What, therefore, the law of nations is, does not rest upon mere theory, but may be considered as modified by practice, or ascertained by the treaties of nations at different periods. It does not follow, therefore, that because a principle cannot be found settled by the consent or practice of nations at one time, it is to be concluded, that at no subsequent period the principle can be considered as incorporated into the public code of nations. Nor is it to be admitted, that no principle belongs to the law of nations, which is not universally recognized, as such, by all civilized communities, or even by those constituting what may be called the Christian States of Europe. Some doctrines, which we, as well as Great Britain, admit to belong to the law of nations, are of but recent origin and application, and have not, as yet, received any public or general sanction in other nations; and yet they are founded in such a just view of the duties and rights of nations, belligerent and neutral, that we have not hesitated to enforce them by the penalty of confiscation. There are other doctrines again, which have met the decided hostility of some of the European States, enlightened as well as powerful, such as the right of search, and the rule that free ships do not make free goods, which, nevertheless, both Great Britain and the United



States maintain, and in my judgment with unanswerable arguments, as settled rules in the law of Prize, and scruple not to apply them to the ships of other nations. And yet, if the general custom of nations in modern times, or even in the present age, recognized an opposite doctrine, it could not, perhaps, be affirmed, that that practice did not constitute a part, or, at least, a modification, of the law of nations.

"But I think it may be unequivocally affirmed, that every doctrine, that may be fairly deduced by correct reasoning from the rights and duties of nations, and the nature of moral obligation, may theoretically be said to exist in the law of nations; and unless it be relaxed or waived by the consent of nations, which may be evidenced by their general practice and customs, it may be enforced by a court of justice, whenever it arises in judgment. And I may go further and say, that no practice whatsoever can obliterate the fundamental distinction between right and wrong, and that every nation is at liberty to apply to another the correct principle, whenever both nations by their public acts recede from such practice, and admit the injustice or cruelty of it.

"Now in respect to the African slave trade, such as it has been described to be, and in fact is, in its origin, progress, and consummation, it cannot admit of serious question, that it is founded in a violation of some of the first principles which ought to govern nations. It is repugnant to the great principles of Christian duty, the dictates of natural religion, the obligations of good faith and morality, and the eternal maxims of social justice. When any trade can be truly said to have these ingredients, it is impossible that it can be consistent with any system of law, that purports to rest on the authority of reason or revelation. And it is sufficient to stamp any trade as interdicted by public law, when it can be justly affirmed, that it is repugnant to the general principles of justice and humanity.

"Now there is scarcely a single maritime nation of Europe, that has not in the most significant terms, in the most delibe-

rate and solemn conferences, acts, or treaties, acknowledged the injustice and inhumanity of this trade, and pledged itself to promote its abolition. I need scarcely advert to the conferences at Vienna, at Aix-la-Chapelle, and at London, on this interesting subject, as they have been cited at the argument of this cause, and authenticated by our own government, to show what may be emphatically called the sense of Europe upon this point. France, in particular, at the conferences at Vienna, in 1815, engaged to use 'all the means at her disposal, and to act in the employment of these means with all the zeal and perseverance due to so great and noble a cause,' as the abolition of the slave trade. And accordingly, in the treaty of peace between her and Great Britain, France, expressing her concurrence without reserve in the sentiments of his Britannic Majesty with respect to this traffic, admits it to be 'repugnant to the principles of natural justice, and of the enlightened age in which we live;' and, at a short period afterwards, the government of France informed the British government, 'that it had issued directions in order that, on the part of France, the traffic in slaves may cease from the present time everywhere and forever.' The conduct and opinions of Great Britain, honorably and zealously, and I may add, honestly, as she has been engaged in promoting the universal abolition of the trade, are too notorious to require a pointed enumeration. She has, through her Parliament, expressed her abhorrence of the trade in the most marked terms, as repugnant to justice and humanity; she has punished it as a felony, when carried on by her subjects; and she has recognized, through her judicial tribunals, the doctrine that it is repugnant to the law of nations. Our own country, too, has firmly and earnestly pressed forward in the same career. The trade has been reprobated and punished, as far as our authority extended, from a very early period of the government; and by a very recent statute, to mark at once its infamy and repugnance to the law of nations, it has been raised in the catalogue of public crimes to the bad eminence of piracy. I



think, therefore, that I am justified in saying, that, at the present moment, the traffic is vindicated by no nation, and is admitted by almost all commercial nations as incalculably unjust and inhuman. It appears to me, therefore, that in an American court of judicature, I am bound to consider the trade an offence against the universal law of society, and in all cases, where it is not protected by a foreign government, to deal with it as an offence carrying with it the penalty of confiscation.

“And I cannot but think, notwithstanding the assertion at the bar to the contrary, that this doctrine is neither novel nor alarming. That it stands on principles of sound sense and general policy, and, above all, of moral justice. And I confess, that I should be somewhat startled, if any nation, sincerely anxious for the abolition of the slave trade, and earnest in its duty, should interpose its influence to arrest its universal adoption.

“There is an objection urged against the doctrine, which is here asserted, that ought not to be passed over in silence; and that is, if the African slave trade is repugnant to the law of nations, no nation can rightfully permit its subjects to carry it on, or exempt them from obedience to that law; for it is said, that no nation can privilege itself to commit a crime against the law of nations by a mere municipal regulation of its own. In a sense the proposition is true, but not universally so. No nation has a right to infringe the law of nations so as thereby to produce an injury to any other nation. But if it does, this is understood to be an injury, not against all nations, which all are bound or permitted to redress; but which concerns alone the nation injured. The independence of nations guaranties to each the right of guarding its own honor, and the morals and interests of its own subjects. No one has a right to sit in judgment generally upon the actions of another; at least to the extent of compelling its adherence to all the principles of justice and humanity in its domestic concerns. If a nation were to violate as to its own subjects



in its domestic regulation the clearest principles of public law, I do not know, that that law has ever held them amenable to the tribunals of other nations for such conduct. It would be inconsistent with the equality and sovereignty of nations, which admit no common superior. No nation has ever yet pretended to be the *custos morum* of the whole world; and though abstractedly a particular regulation may violate the law of nations, it may sometimes, in the case of nations, be a wrong without a remedy.

This opinion was altogether in advance of the morals of the time. Broad and just as are the foundations on which it is built, it was nevertheless in contravention of the doctrine held by Sir William Scott in the case of the *Louis*, (2 Dodson's R. 210,) decided in the year 1817, and by Justices Bailey and Best in the case of *Madrazo v. Willis*, (3 Barn. & Ald. R. 353,) in the year 1820. It had, indeed, been previously asserted by Sir William Grant, (*The Amedie*, 1 Dodson's R. 84,) in a case of capture, *jure belli*, that as the slave trade was against the national law of England, it was *primâ facie* illegal, and the burden of proof was on the claimant to show that it was legal by the particular law of his country; but this decision was overruled by the later case of the *Louis*. The doctrine asserted in *La Jeune Eugénie* was not fully recognized by the Supreme Court of the United States in the subsequent case of *The Antelope*, (10 Wheat. R. 211); but its declaration by my father was an advancing step in international jurisprudence, and it is to be hoped that the time is at hand when it will be the acknowledged law of nations.

In a letter to Mr. Greenleaf, dated May 28th, 1822, my father thus speaks of this case:—

"I send you a copy of the slave trade case, *La Jeune Eugénie*, of which I beg your acceptance. It is a very important case, and I shall not be surprised if you differ from my judgment, for it is a very debatable question. I have the consolation, however, to know that the late Mr. Pinkney was unequivocally with me in judgment; and his opinion, after consideration, was truly weighty. It is, however, hard to have Sir William Scott and the Court of King's Bench upon my back."

The following extract from a letter to Lord Stowell, dated January 2d, 1822, bears upon the slave trade, and refers to it as being in violation of the Law of Nations.

"I am sorry to feel, in common with yourself, a good deal of despondency respecting the slave trade. Our laws are sufficiently penal, and there is no want of zeal, either in the Government or in the people, to aid in its suppression so far as our citizens are concerned. But it has always appeared to me that nothing effectual can be done, except by a general coöperation of nations, declaring it piracy punishable by all, and giving a limited right of search to all lawful cruisers to examine and capture all vessels found in places or latitudes where the trade is carried on. I am aware that some difficulties have been suggested by the American Government on this subject, and it would certainly ill become me to censure or doubt the policy it has seen fit to adopt; but it would afford no small relief, if authority were given to foreign cruisers to seize our ships engaged in that trade, and send them in for adjudication to our own tribunals, with an ulterior right to receive the proceeds of the cargo, if condemned. And if the Governments of Europe were to adopt this as a general policy in good faith, I should have better hopes that the traffic might, at no distant time, be greatly diminished.



"The great question, as to the slave trade being prohibited by the law of nations, which came before you in the case of the St. Louis, has been agitated in the Court where I preside, and I have taken the liberty of sending you a copy of the opinion delivered on that occasion. I am aware how slender claims it has upon your notice, considering that it differs from that which you entertain, and have expounded with so much force of reasoning and illustration. And yet I have felt myself compelled by my own judgment, however erroneous it may be, to come to a different conclusion. A strong sense of duty, mingled with great respect for your opinion, obliged me to follow what seemed to me the just doctrine."

In a letter dated Salem, January 10th, 1822, and addressed to his constant friend, Hon. Jeremiah Mason, one of the ablest lawyers of his time, my father expresses his interest in this judgment, and makes the following remarks in relation to it, which are worthy of especial notice:—

"My opinion in the French slave ship is now in the press, and will be published in a few days. I took a good deal of pains about it, and became completely satisfied that I was right. However, it is one of those cases in which opinion will probably be greatly divided. I cannot but think, that the ultimate judgment to which a man will come on this subject, will depend as much upon his notions of moral justice among nations, as upon legal argumentation.

Upon receiving the report of the case, which was subsequently published in February, 1822, Mr. Mason returned an answer, from which the following passage is taken:—



TO HON. JOSEPH STORY.

. Portsmouth, February 5th, 1822.

MY DEAR SIR :

I thank you for the report you sent me of the case of *La Jeune Eugénie*. I have derived both instruction and gratification from your most able opinion. After reading it with care and attention, your reasoning seems to me to be sound and conclusive. The result is certainly of vast importance. If your doctrine is sustained, as I trust it will be, it may do much towards destroying this horrible traffic in human flesh.

With much respect and esteem, I am, dear sir, sincerely  
yours, J. MASON.

It was at this time that the admission of Missouri as a State gave rise to a fierce contention between the North and the South, as to whether slavery should be prohibited in the territories belonging to the United States, and in all new States claiming admission into the Union. After a very violent and protracted debate, the victory was gained by Slavery over Freedom, and the famous compromise was made, by which all that portion of the then existing territories and States below the latitude of  $36^{\circ} 30'$ , was surrendered to slavery, and all above was given to freedom.

While this subject was agitating the country, a town meeting was held in Salem, on December 10th, 1819, in which resolutions were passed, condemning the proposed compromise. My father attended this meeting, and in an elaborate speech in support of the resolutions, he declared himself in favor of the absolute prohibition of slavery by express act of Congress in all the territories

of the United States, and against the admission of any new slave-holding State, except on the unalterable condition of the abolition of slavery. These views he advocated as being founded on the Declaration of Independence, the Constitution of the United States, and the principles of freedom by which this Government was originally inspired. This was the only instance during his whole judicial life in which he was present at a political meeting, or publicly engaged in the discussion of a political question. This fact alone shows how momentous he considered the subject in controversy. Involving as it did a question not merely of party politics, but of national policy and constitutional law, striking at the very principles of the government, darkening the whole future of an oppressed race, and drawing after it vast consequences of evil, — he felt that his duty to himself, his country, and the world, required him to overstep the limits he had set for himself on ordinary occasions, and to throw the whole weight of his influence and opinions upon the side of liberty and law.

The resolutions which were offered by Col. Pickman, at this meeting, and unanimously adopted, were as follows : —

*“ Resolved, That in the opinion of this meeting, it is the duty of the people and Government of the United States by all practicable means, to prevent the extension of so great a political and moral evil as slavery ; and for this end, that it is constitutional and expedient to prohibit the introduction of it into such States as may be hereafter established in any territory of the United States, without the original limits of the said States.*

*“ Resolved, That the thanks of the meeting be given to the*



Hon. N. Silsbee, the Representative of this District in Congress, for his endeavors at the last session of Congress to introduce into the bill for the establishment of the State of Missouri, a provision to prohibit slavery in that State, as had before been done by Congress in the States of Ohio, Illinois, and Indiana; a provision which has been found as beneficial to those States as it is conducive to the honor and interest of the United States."

Of my father's speech, the Salem Gazette, of December 11th, 1819, gives the following account:—

"The Hon. Joseph Story closed the discussion in a speech of great ability and interest. In the course of a most conclusive and elaborate argument, in which he examined all the clauses of the Constitution and ordinances relating to the subject, he demonstrated the constitutionality of excluding slavery from Missouri; that the spirit of the Constitution, the principles of our free government, the tenor of the Declaration of Independence, and the dictates of humanity and sound policy, were all directly opposed to the extension of slavery. We regret that it is not in our power to give a report of his speech at length, for the reasoning of a civilian so distinguished for the minuteness of his investigations, and the extent of his research, would give confidence to truth."

A passage from a letter, written at this time, explains some of his views and feelings on this subject.

TO STEPHEN WHITE, ESQ.

Washington, February 27th, 1820.

DEAR BROTHER:

Since I wrote you last, nothing of any considerable importance has occurred. The Missouri question still depends



in the House, but is approaching its termination, and several votes are trembling. The ultimate majority for the restriction is now supposed not to exceed six, and whether this will stick, is a question of hope and fear with the respective parties. There is a great deal of heat and irritation, but most probably a compromise will take place, admitting Missouri into the Union without the restriction, and imposing it on all the other Territories. Virginia is most outrageous against the compromise; she insists that the Territories shall be free to have slaves, and uses all sorts of threats against all who dare propose a surrender of this privilege. Mr. Randolph, in the House of Representatives, made a furious attack upon all who advocated the compromise. He said, "the land is *ours*, (meaning Virginia's,) and we will have it, and hold and use it as we (Virginians) please." He abused all the Eastern States in the most bitter style; and intimated, in the most direct manner, that he would have nothing to do with them. "We," said he, "will not cut and deal with them, but will put our hands upon our pockets, and have nothing to do in this game with them." His speech was a very severe philippic, and contained a great many offensive allusions. It let out the great secrets of Virginia, and blabbed that policy by which she has hitherto bullied us, and led us, and wheedled us, and governed us. You would not have supposed that there was a State in the Union, entitled to any confidence or character, except Virginia; he bespattered her with praise, as much as he abused others. But of this say but little, I will talk about it on my return; but our friends in general are not ripe for a disclosure of the great truths respecting Virginia policy.

I hear that the members from Maine in the Massachusetts Legislature are giving way, and are willing to yield up, on the Missouri question. This is just what I expected. Mr. Holmes has greatly contributed to this result, and I hear that General King and others are faint-hearted. If, however, the

compromise can take place on fair terms, it is probably the best thing that under the circumstances can take place.

In great haste, truly and affectionately,

Your friend and brother,

JOSEPH STORY.

The next letter, written at a later time, shows the caution which he exercised in respect to politics, and gives still more force to his action on the Missouri question.

TO HON. EDWARD EVERETT.

Salem, August 4th, 1825.

MY DEAR SIR:

I have the pleasure of your letter of yesterday. I never had the slightest knowledge of the project of the Boston Journal until since my return from Niagara, and then only by seeing my name connected with it in the newspapers.

Since I have been on the Bench, I have carefully abstained from writing in the newspapers, and have endeavored to avoid mingling in political engagements, so far as I could without a surrender of my own independence. I have done this from the desire that my administration of justice should not be supposed by the public to be connected with political views or attachments; and from a fear that I might insensibly be drawn too much into the vortex of party excitements. I think the public opinion now points out this course to Judges; and of course I could not but feel regret that I had been held up as willing to engage anew in politics. I was satisfied that it originated in mistake; and the account you have given of the matter, explains it very satisfactorily.

In respect to the establishment of a Journal on national principles, your brothers were very right in supposing that I could not but wish it success. So far as my individual wishes, or subscription, or recommendation could go to assist



it, they would be given with the utmost cheerfulness and frankness. I have long thought that a Journal like Mr. Walsh's in Philadelphia, would meet with eminent success in Boston, and was called for by our literary and political reputation. And I know of no auspices under which the enterprise could be so well commenced and carried on, as of your family and our common friends.

The National Intelligencer having given currency to the report throughout the Union, I have thought it necessary to have it corrected there, as well as in Salem; beyond this I have no solicitude on the subject.

I have never seen the Prospectus of the Journal, and should be glad to read it. . . .

Believe me, very truly and kindly,

Your obliged friend,

JOSEPH STORY.

The following correspondence, between my father and the Honorable Jeremiah Mason, relates to the Virginia Resolutions vindicating the introduction of slavery into Missouri.

TO HON. JUDGE STORY.

Portsmouth, June 23d, 1820.

MY DEAR SIR:

I have just returned from a short session of our Legislature, where my chief object was, to take care of the Virginia Resolutions on the Missouri question. I send you by to-day's mail, a copy of our report and resolutions in answer. At the first of the session, there was manifestly a strong disposition to do nothing on the subject. In drawing the report and resolutions, I was, therefore, obliged to be very cautious, that there should be nothing to carp at. This excess of caution, has I fear, given them too much tameness. In the end, a fine spirit was excited, putting down all opposition, and they passed, as you will see, unanimously. Three



members of the House of Representatives escaped the question by bolting. I made a speech, mostly on the interest we have in the subject, and the great danger to the free States from the increase of slavery, which was evidently heard with much satisfaction.

Why has not Governor Brooks given the Virginia Resolutions to your Legislature?

With best regards to Mrs. Story, in which I am joined by my wife and daughter,

I am truly yours,

J. MASON.

TO HON. JEREMIAH MASON.

Salem, June 25th, 1820.

MY DEAR SIR:

I received your letter and the accompanying report by yesterday's mail, and am much obliged to you for it. It contains a very satisfactory refutation of the Virginia Resolutions in a tone of moderation, which forms a fit contrast to her parade and arrogance. There are several hits which will wound her deeply. I rejoice exceedingly that New Hampshire has come out in this determined manner with an unshrinking unanimity. It contrasts very unfavorably for our feelings with the weak, vacillating policy of Massachusetts on the same subject. We were sacrificed to the scruples and doubts of the faint-hearted, and the selfish policy of the time-serving. I wish Mr. Parrot much joy of his vote.

I passed yesterday at Nahant with Mr. Webster, Mr. Blake, and a half dozen sound lawyers. Your report was read for the edification of all of us, and was very highly approved. One illustration was new to us all,—that derived from the treaties respecting the Slave Trade; and we all agreed in the force and propriety of it.

I am, dear sir, with the highest respect,

Your most obliged friend,

JOSEPH STORY.

The following passages from letters written to the Hon. Jeremiah Mason at this time, show my father's tone of feeling on this subject. The first is from a letter dated November 26th, 1819:—

"We are deeply engaged in the Missouri question. I have fought against the slave trade in Rhode Island, *pugnīs et calcibus*. My charge was well received there."

The next passage is from a letter dated April 20th, 1820:—

"I have much to say about Washington, and Missouri, and Slave States, when we meet. New England, as usual, has been sadly *mis*-represented."

The following extracts from a letter written at this period, contain some of his views of party politics, and allude to one of a series of communications in the Boston Advertiser, on the subject of the Missouri compromise:—

TO PROF. EDWARD EVERETT.

Washington, March 7th, 1820.

MY DEAR SIR:

I received your very acceptable letter of the 2d instant this morning, and most cordially agree with you in opinion. It is high time that all honest and intelligent men of all parties in Massachusetts were united in the cause of our country; that national policy, national interests, national honor, and above all, national principles, should absorb all local feeling and disputes. In New England we have a great deal of effective talent, enterprise, and industry,—the great materials of national grandeur. We have foolishly suffered ourselves to be wheedled by Southern politicians, until we have almost forgotten that the honors and the Constitution of the Union

are as much our birthright and our protection, as of the rest of the United States. Virginia has ruled us by the old maxim, "divide and conquer." The cry of "federal tricks," has been like the cry of "mad dog." It has half frightened us out of our senses, and led us to adopt any *nostrum* which the cunningly devised *fables* have prescribed. I trust that the result of the Missouri question will arouse all the spirit of New England. All the South and West stood in solid column, while the Eastern States were thinned by desertion, and disgraced by the want of "military" commanders.

There is really no difference in principle between the great body of the Republicans and Federalists in the East. The old causes of dissension are gone, and as I trust, forever. We all love the principles of the Federal Constitution. The spirit of anti-federalism has made but a partial progress among us. But it exists deep and strong, both in its roots and in its branches, at the South and West, and I verily believe that if the East does not send forth its talents to sustain the Constitution, and its legitimate powers in Congress, the Constitution will be frittered away, until it becomes the mere ghost of the confederation. I will contribute all my little aid at all times to restore harmony and solid confidence among the federalists and republicans in Massachusetts. There will be a few ultras who will never consent to union, but their influence will continue to decline; and there will be low office-seekers, who will seek to perpetuate party feuds that they may profit by them; for they cannot hope to rise, when talent, and virtue, and learning possess their proper authority over the public mind.

Our friend Wheaton and myself have read the No. 7 on the Missouri question in the Advertiser with infinite delight. We most truly respond to all that you, (I beg your pardon,) that Mr. Tudor says. We read not, and you know we should not read the sentiments of another friend, whose heart we love even more than we revere his talents. Tell Mr. Tudor if he always writes thus, we shall be obliged to say, as



Johnson before us said of Gray, "if he write always thus, it will be in vain to blame, and useless to praise him."

It grows quite late, but I could not sleep until I had written you. Wheaton is by my side, and desires to be most affectionately, most sincerely remembered to you, and by you. We have greatly regretted your departure. *Philæ E \* \* \** has often echoed from our sad, though not darkened walls.

I am, affectionately, your friend,

JOSEPH STORY.

His feelings on the subject of Slavery and the Slave Trade, were so strong that they overflowed in all his correspondence at this period. Thus, in a letter written to Sir William Scott, and dated May 20th, 1820, he says,—

"We have had some extremely interesting discussions in our national legislature during the last winter on the subject of slavery. The non-slaveholding States, as you would naturally suppose, were hostile to its further extension; but their wishes have been baffled by the fears, jealousies, and supposed interests of the slave-holding States. The question alternately resolved itself into a constitutional inquiry as to the powers of Congress to impose a condition upon the admission of the territory of Missouri into the Union, that it should prohibit the further introduction of slavery there. I have thought that you might possibly find leisure to devote a few minutes to this subject, and have therefore put up a pamphlet containing the argument in favor of the power, in which I most cordially concur. I wish, for the honor of my country, that the prohibition had passed the national legislature.

"With a view also to show my feelings as to the slave trade, and the piracies which are so frequent on the ocean, I have thrown in a charge which I recently delivered to the Grand Jury. It may, and I hope will tend to do away any impression, that there is in America the slightest inclination

to tolerate the one or the other. Whenever occasion has required, our laws on these subjects have been executed with the most rigorous severity."

Again, writing to William Johnson, Esq., of New York, the accomplished reporter, on matters purely professional, he says, under date of June 4th, 1820,—

"I have also put up three pamphlets, in which I take no equivocal interest. I have a deep sense of the immense value of commerce to our country, and a rooted aversion to slavery in Missouri and in Africa."

## CHAPTER XII.

### JUDICIAL LIFE.

WRITES A MEMORIAL AGAINST RESTRICTIONS ON COMMERCE—EXTRACT FROM IT—ARTICLE ON CHANCERY JURISDICTION—CORRESPONDENCE WITH CHANCELLOR KENT—LETTER TO LORD STOWELL—PROCURES LORD HALE'S MANUSCRIPT DISSERTATION ON ADMIRALTY JURISDICTION—CONVENTION OF MASSACHUSETTS TO REVISE ITS CONSTITUTION—HIS LABORS AND SPEECHES—SPEECH AGAINST DIMINISHING THE SALARIES OF THE JUDGES OF THE SUPREME COURT OF THE STATE—LETTER RELATING TO THIS CONVENTION—HIS ZEAL IN ASSISTING HIS FRIENDS—LETTERS—DRAWS UP THE RULES OF EQUITY PRACTICE IN HIS CIRCUIT—LETTER COMMENTING ON THE FOURTH VOLUME OF JOHNSON'S CHANCERY REPORTS—ADDRESS BEFORE THE SUFFOLK BAR—SKETCH OF IT—EXTRACT—LETTERS—DELEGATION OF INDIANS AT WASHINGTON—DEATH OF MR. PINKNEY—SKETCH OF HIM—MR. PINKNEY'S ESTIMATE OF MY FATHER—ACCIDENT—VIEWS OF AFRICAN COLONIZATION—LETTERS FROM WASHINGTON—DEATH OF MR. JUSTICE LIVINGSTON—LETTERS ON THE REVISION OF THE CONSTITUTION OF NEW YORK—CHRISTIANITY A PART OF THE COMMON LAW—LIST OF ARTICLES BY MY FATHER PUBLISHED IN THE AMERICAN JURIST—SIR JAMES MACKINTOSH'S ESTIMATE OF HIS JUDGMENTS—ARTICLE ON THE GROWTH OF THE COMMERCIAL LAW—MEMORIAL IN RESPECT TO THE "FELLOWS" OF HARVARD UNIVERSITY—DRAWS UP THE CRIMES ACT—CASE OF CHAMBERLAIN *v.* CHANDLER—LETTER ON UNITARIANISM—LINES FOR A LADY'S ALBUM.

In June, 1820, my father drew up a memorial to the Congress of the United States in behalf of the merchants and others interested in commerce in Salem and its vicinity, praying against the discontinuance of credits



on Revenue bonds, the abolition of drawbacks, and other restrictions of commerce proposed by Congress. The preliminary observations in this memorial will show the general views of my father upon the question of free trade.

## MEMORIAL.

"The undersigned Memorialists, merchants, and inhabitants of Salem, in the Commonwealth of Massachusetts, and of the towns in its vicinity, beg leave most respectfully to represent:— That they have seen, with unfeigned regret and surprise, some propositions recently brought forward in Congress, and others advocated by respectable portions of the community, which in their humble opinion are calculated seriously and certainly to injure, if not eventually to destroy, some of the most important branches of the commerce and navigation of the United States.

"The Memorialists have not the slightest intention of casting any imputation of unworthy motives upon those, from whom on this occasion they feel themselves compelled to differ in the most decided manner. They are ready to admit, that many of those, who are inclined to revive commercial prohibitions and restrictions, and to change some of the fundamental rules of our financial policy, are governed by motives solely suggested by their own views of the national interests. They are free also to admit, that the manufacturing interests of the country deserve to receive the fostering care and patronage of the Government. But, while they make these admissions, they also beg leave to suggest, that the interests of commerce are not less vital to the welfare and prosperity of the Union, than manufactures; and that it never can be a sound or safe policy to build up the one upon the ruins of the other. Under a wise and enlightened revenue system, the commerce of our country has hitherto advanced with a rapidity and force, which have exceeded the most

sanguine expectations of its friends. This commerce has contributed largely to the employment of the capital, the industry, and the enterprise of our citizens. It has quickened the march of agriculture; and by increasing the value, as well as amount, of its products, has given to the planters and husbandmen a reward in solid profit for their toils. It has also materially sustained the credit and finances of the nation, by insuring a regular and growing revenue, through a taxation scarcely felt, and cheerfully borne by all classes of our citizens. It has also given birth to our naval power, by fostering a hardy race of seamen, and patronizing those arts, which are essential to the building, preservation, and equipment of ships. It has greatly enlarged, and, the Memorialists had almost said, created, the moneyed capital of the country. And the Memorialists believe, that it cannot be too frequently or deeply inculcated as an axiom in political economy, that productive capital, in whatever manner added to the stock of the country, is equally beneficial to its best interests. Its real value can never be ascertained by the sources from whence it flows, but from the blessings which it dispenses. A million of dollars added to the productive capital by commerce is at least as useful as the same sum added by manufactures.

“The benefits of the commerce of the United States, which have been enumerated, are not deduced from theoretical reasoning; they are established by thirty years’ experience, since the Constitution was adopted. At that time our capital was small, and had suffered for a series of years a continual diminution. Our agriculture was depressed, and our finances were embarrassed. The changes, which a thrifty commerce during this period has contributed to produce, are so striking, that they scarcely require to be stated. There is not a single portion of the country that has not felt its beneficial influence. On the seaboard, we have everywhere flourishing towns and cities, the busy haunts of industry, where the products of our soil are accumulated on their transit to foreign countries. In



the interior, hundreds of towns have arisen in places, which but a few years since were desolate wastes, or dreary forests. The agriculture of the old States has grown up, and spread itself in a thousand new directions; and our cotton and our wheat, our tobacco and our provisions, are administering to the wants of millions, to whom even our very name was but a short time ago utterly unknown.

"The Memorialists would respectfully ask, if it be not a part of the duty of a wise nation to profit by the lessons of experience? Is it just, is it salutary, is it politic, to abandon a course, which has so eminently conduced to our welfare, for the purpose of trying experiments, the effect of which cannot be fully ascertained, which are founded upon merely theoretical doctrines, at best complex and questionable, and, it may be, in practice, ruinous as well to morals as to property? Suppose it were practicable to arrest the present course of commerce, to narrow its limits, and even to reduce it to the mere coasting trade of the nation, is it clear, that the capital, thus withdrawn from commercial pursuits, could be as usefully or as profitably employed in any other branch of business? It is perfectly certain, that such a change must be attended with severe losses to the merchants, and with ruin to numerous classes of our citizens, to our seamen, and shipwrights, and other artisans, whose business depends on, or is connected with, commerce. Cases may possibly arise, in which the interests of a respectable portion of the community may be justly sacrificed; but they are cases of extreme public necessity; not cases, where the rivalry and the interests of one class of men seek to sustain themselves by the destruction of another. In a free country, too, it may well be asked, if it be a legitimate end of government to control the ordinary occupations of men, and to compel them to confine themselves to pursuits, in which their habits, their feelings, or their enterprise, forbid them to engage. While the manufacturers are left free to engage in their own peculiar pursuits, enjoying, in common with others, a reasonable protection from the



Government, the Memorialists trust, that it is no undue claim on their own part to plead for the freedom of commerce also, as the natural ally of agriculture and naval greatness. Nothing, however, can be more obvious, than that many of the manufacturers and their friends are attempting, by fallacious statements, founded on an interested policy, or a misguided zeal, or very shortsighted views, to uproot some of the fundamental principles of our revenue policy, and to compel our merchants to abandon some of the most lucrative branches of commerce, — branches, which alone enable us to contend with success against the monopoly and the competition of foreign nations.

“It is not a little remarkable, too, that these attempts, to which the Memorialists allude, are not only repugnant to those maxims of free trade, which the United States have hitherto so forcibly and perseveringly contended for, as the sure foundation of national prosperity; but they are pressed upon us at a moment, when the statesmen of the Old World, in admiration of the success of our policy, are relaxing the rigor of their own systems, and yielding themselves to the rational doctrine, that national wealth is best promoted by a free interchange of commodities, upon principles of perfect reciprocity. May the Memorialists be permitted to say, that it would be a strange anomaly in America to adopt a system which sound philosophy is exploding in Europe; to attempt a monopoly of the home market, and yet claim an entire freedom of commerce abroad; to stimulate our own manufactures to an unnatural growth by the exclusion of foreign manufactures, and yet to expect, that no retaliatory measures would be pursued by other nations. If we are unwilling to receive foreign manufactures, we cannot reasonably suppose, that foreign nations will receive our raw materials. We may force other nations to seek an inferior market for their productions; but we cannot force them to become buyers, when they are not sellers, or to consume our cottons, when they cannot pay the price in their own fabrics. We may compel

them to use the cotton of the West Indies, or of the Brazils, or of the East Indies, or the wheat of the Mediterranean, an experiment in itself sufficiently dangerous to some of our most vital interests; but we cannot expect them to carry on with us a ruinous trade, when the profit is all on one side. Nations, like individuals, will pursue their own interests, and sooner or later abandon a trade, however fixed may be its habits, where there is no reciprocity of benefit.

There is another consideration, which the Memorialists would respectfully suggest, that is entitled, in their opinion, to great weight on questions of this nature, and that is, the dangers and inconveniences, which fluctuations in the commercial policy of a nation unavoidably produce. The trade of a nation is of gradual growth, and forms its channels by slow and almost imperceptible degrees. Time, and confidence, and protection, and experience, are necessary to give it a settled course. It insinuates itself into the general commerce of the world with difficulty; and when incorporated into the mass, its ramifications are so numerous and intricate, that they cannot be suddenly withdrawn, without immense losses and injuries. Even the temporary stoppage of but a single branch of trade throws thousands out of employment; and by pressing the mass of capital and shipping, which it held engaged in its service, into other branches, it is sure to produce embarrassment and depression, and not unfrequently ruin to the ship-holders and the merchants. Besides all this, men are slow to engage their capital in new pursuits. They have a natural timidity in embarking in enterprises, to which they are not accustomed; and, if the commercial policy of the nation is fluctuating, they feel so much insecurity in it that they are unwilling to yield themselves up even to prospects apparently inviting. No nation ever prospered in commerce, until its own policy became settled, and the channels of its trade were worn deep and clear. It is to this state of things that the capitalist looks with confidence; because he may conclude, that, if his profits



are but small, they are subject to a reasonable certainty of calculation. Another state of things may suit the young and enterprising speculators; but it can never be safe for a nation to found its revenue upon a trade, that is not uniform in its operations. The Memorialists most sincerely believe, that it is a sound political maxim, that the more free trade is, and the more widely it circulates, the more sure will be its prosperity, and that of the nation. Every restriction, which is not indispensable for purposes of revenue, is a shoal, which will impede its progress, and not unfrequently jeopard its security." . . .

The memorial, among other matters, is alluded to in the following letter:—

TO MR. PROFESSOR EVERETT.

Salem, January 17th, 1820.

DEAR SIR:

I have been very much indisposed since I had last the pleasure of seeing you; and what little time I have been able to write or to think, has been employed on the memorial of the merchants of Salem. It is a long, reasoning memorial, and occupied me with some diligence for several days.

I know now that it is utterly hopeless for me to presume to write the review until my return. My time is so continually broken in upon by cares in which I ought to have no immediate concern, or by duties which are forced upon me, that I have not time to do those things which I wish, or to serve those friends whom I respect. What is my remedy?

I owe you a thousand thanks for your account of De Rossi, and for your delightful remarks on the subject of University Education. I go heart and hand with your opinions; but I have my fears that they will not be quite suited to some of our old-fashioned optimists, in and out of academic life.

I am very truly and respectfully,

Your obliged friend,

JOSEPH STORY.



The review alluded to in this letter, was written on his return from Washington. It was an article on Johnson's Chancery Reports, published in the North American Review, then under the editorial charge of Mr. Everett, and contained a sketch of the condition of Equity Jurisprudence before the time when Chancellor Kent was appointed to the Bench of the Court of Chancery in New York, and an argument in favor of the establishment of a Court of Equity, disconnected in its administration from a Court of Common Law. It abounds with practical suggestions, and shows the writer's strong bias towards the principles of Equity, and his intimate familiarity with them. It opens with a laudatory notice of Chancellor Kent, which is not only interesting in itself, but also as evincing that complete freedom from jealousy of temper, and that willingness to acknowledge merit and accord praise, which characterized my father.

This review gave rise to the following correspondence between Mr. Chancellor Kent and my father.

TO HON. JOSEPH STORY.

Albany, August 7th, 1820.

MY DEAR SIR:

I have pretty good reason to believe I am indebted to you for the very flattering notice of my judicial labors, contained in the last number of the North American Review, and I cannot refrain from taking the liberty to assure you that nothing could be more grateful to my feelings, than to be thus honored by your pen. I am deeply grateful for the frank, liberal, and manly sentiments contained in the Review, and it will always continue to be one of the highest objects of my ambition, to cultivate and deserve your esteem and friendship. Nor am I insensible (permit me to say) to the easy and ele-

gant manner in which you display your various learning and cultivated taste, and exhibit the rich treasures of your intellect on every topic connected with jurisprudence.

The article sometime since on Maritime Law I have perused again and again, and though I profess to feel no inconsiderable share of your enthusiasm for justice and truth and the glory connected with the support of them, I am sensible I do not possess either your leisure for general studies, or your means of research, and I certainly dare not pretend to rival you in the rapid and wonderful career of your juridical acquisitions. You have, fortunately for yourself and for your country, the best section in the Union for the application of your powers, and have much more reason than Montesquieu had to thank Heaven that you were born and educated where you are placed. Your judicial circuit is the most pleasant in the United States, and you are located, (if I may use the phrase,) in the very best part of our country for enjoying the blessings of a society equally distinguished for intellectual vigor, exalted morals, classical erudition, and refined taste.

If I did not give incessant attention to cases as they are almost daily presented, they would accumulate on my hands and oppress me. As it is, they give me very little leisure for society, amusement, or books. You guessed well; for when your review came to hand, I was then engaged with an opinion on the right and title of foreign assignees in preference to subsequent attaching creditors under our law, and I was obliged to differ from the case of *Milne v. Moreton*, in 6 Binney, and from the latter part of the decree (if they in Pennsylvania construe it correctly) of the Supreme Court of the United States, in 5 Cranch. Mr. Johnson has now in his possession ample materials for a fourth volume of Chancery Cases, and he is beginning to prepare it for the press.

I am, with the highest respect and regard,

Your friend and obedient servant,

JAMES KENT.



TO HON. JAMES KENT.

Salem, August 15th, 1820.

DEAR SIR :

Your letter of the 7th instant has afforded me great satisfaction. Although I am not solicitous of being publicly known as the author of the Review of Mr. Johnson's Chancery Reports, in the North American, yet I will not affect a concealment which is useless, and under existing circumstances would be extremely disingenuous. The opinions which I have expressed in that Review, are my real, sincere, and deliberate opinions; and it is exceedingly gratifying to me that you are pleased to receive them in the spirit in which they are conceived. In America I think we are in general too cold in the expression of that approbation of public men which we really feel. It is an error, which conceals our real advancement in science from foreigners, and does injustice to that honorable ambition which can hope for no adequate reward, except from a well-earned fame, cheerfully and publicly given. In paying you my public tribute of respect and reverence, I have done no more than perform a duty which every professional man owes to the science of jurisprudence, and which I more particularly owe to you, from the abundant instruction I have derived from your labors.

I do not even profess to be insensible to the praise you are so kind as to bestow on me, at the same time that I feel humbled by the consideration that I do not better deserve it. It has an inexpressible value to me, and will at least cheer me on in endeavors more justly to deserve it. And I am free to declare, that I think the Courts of the United States offer a scene for very enlarged and extensive examinations of the principles of jurisprudence. If I can be useful there, in assisting in the foundation of liberal principles of national law and constitutional law, all the object of my life will be fully attained.



I am glad of your reëxamination of the question decided in *Milne v. Moreton*, 6 Binney. Several years since, I looked at that question, and although I came to no definite result, I find that in my own copy of 5 Cranch, there is, against the dictum of the Chief Justice in delivering the opinion of the Court in *Harrison v. Sterry*, a query with a reference to 4 Term Rep. 182, 192, and 1 East, 6. It becomes me at present to speak with all diffidence of the doctrine, as I have not lately examined it, but I would gladly ask what difference there is between a transfer of property by the act of the party and by the act of law, when the property is personal, and is in a foreign country, whose laws contain no provision against such transfer, or against the adoption of the principles of international law? I confess myself not as yet to have perceived, why a statute transfer of personal property is less efficacious in producing a transmutation of title, than a voluntary assignment, and a previous voluntary assignment would beyond all question overreach a subsequent attachment of creditors. I hardly need add, that at present I find myself constrained to adopt your decision in preference to those from which you have dissented.

With my best wishes for your continued health and happiness,

I am, dear sir, most respectfully,

Your faithful friend and servant,

JOSEPH STORY.

The following letter refers to the same article.

TO MR. PROFESSOR EVERETT.

Salem, January 15th, 1820.

MY DEAR SIR:

I suppose that a person who writes in a bad handwriting and in great haste, and sends a foul copy to press, is justly punished, if he falls under the censure of the printer's devil; and is compelled to swallow, with what appetite he may, all the blunders that this illustrious personage chooses to force

upon him. Now this is just my predicament, and as a Judge bound to inflict punishment in all proper cases, I do not complain of it in my own. Still, however, as a warning for all others, I make my confession, and just remind you of some of the errors in the Review on the Chancery Jurisdiction, which affect the sense, leaving you to publish them, or not, as the confessions of other criminals, either before or after the author is hanged by the verdict of a jury of critics.

I thank you most sincerely for the high pleasure and instruction you have given me in this number of the Review. I agree with you as to Mr. Tudor's book, and you have almost persuaded me, you are right as to the Indians. If you continue to write thus powerfully, in such a strain of manly, vigorous sense, with such glowing eloquence, you will humble all of us, but nobly exalt the pride and character of our country.

Wishing you, as I do, all happiness and health, and an imperishable fame, built on the solid foundations of learning, and genius, and virtue,

I am most respectfully and affectionately,

Your obliged friend,

JOSEPH STORY.

The next letters were written from Washington, during the session of the Supreme Court in 1819.

TO MRS. JOSEPH STORY.

Washington, February 14th, 1820.

MY DEAR WIFE:

On Sunday I went to attend public worship at the Capitol; Mr. Everett preached his famous sermon, "Brethren, the time is short;" some passages of which he left out, and in their stead introduced beautiful extracts from his sermon on the future prospects of America. The sermon



was truly splendid, and was heard with a breathless silence. The audience was very large, and in that magnificent room, (the House of Representatives,) it had vast effect. I saw Mr. King of New York and Mr. Otis of Massachusetts there; they were both very much affected with Mr. Everett's sermon, and Mr. Otis in particular wept bitterly. There were some very touching appeals to our most delicate feelings, on the loss of our friends. Indeed, Mr. Everett was almost universally admired as the most eloquent of preachers. Mr. King told me he never heard a discourse so full of unction, eloquence, and good taste. . . .

Your affectionate husband,

JOSEPH STORY.

TO STEPHEN WHITE, ESQ.

Washington, February 27th, 1820.

DEAR BROTHER:

. . . The Ohio controversy respecting the Bank of the United States, is kept up with unabated vigor, and there is no probability that the case will come before us until next year. It is indispensable that I should not have any real, or imagined interest in the Bank; as it is not improbable that I shall have causes before me in the Circuit Court, raising some of the questions. I wish you, therefore, to understand that I do not wish, under any circumstances, to have the shares which I transferred to you, kept by you with any view to accommodate me, if I should wish to re-purchase them in future. It is indispensable that I should not hold any shares, at any time hereafter, as the Bank will commence its future suits in the Circuit Court; if therefore you do not wish to hold the shares for yourself, pray sell them immediately at their current price, and if they should not bring what you allowed me, I shall feel bound to refund the difference, as I know you took them merely for my accommodation. . . .

"The Bankrupt Bill will not be passed this session. So much time is wasted, that there is no chance for any melio-



ration of our code of laws upon this, or indeed upon any other subject. There are many enemies of a Bankrupt system, some friends, and many very lukewarm or indifferent. I despair of any great public measures founded on national policy. . . .

In great haste, truly and affectionately,

Your friend and brother,

JOSEPH STORY.

The following letter was written to Sir William Scott, during this year:—

TO THE RIGHT HON. SIR WILLIAM SCOTT.

Salem, May 20th, 1820.

SIR:

The death of Lord Ellenborough had previously reached us through the medium of the newspapers, and excited universal regret among the profession. We considered him as a very able judge, of great learning, and a sound, discriminating judgment, and worthy of the seat which Lord Kenyon and Lord Mansfield had filled with such distinguished honor before him. It affords me personally, also, great satisfaction to learn that Lord Eldon is still enabled to preside in the Court of Chancery, where his profound judgments have so long instructed and enlightened the bar, and moulded into symmetry the great principles of equity. To us in the United States his labors have been of singular utility. Until a comparatively recent period our equity jurisprudence has not, from various local circumstances, had a very extensive range; and it has been fortunate, that at the moment of its enlarged exercise, it has had the aid of his large experience and minute examination of the value and weight of authorities. May I add, that the kind manner in which he is pleased to speak of our reports is the more flattering, as it comes from one, whose judicial character has long since acquired our unqualified

confidence. I hope he may long continue to adorn Westminster Hall.

There is a class of cases belonging to our jurisprudence, which can scarcely arise in England, or at least cannot, that I am aware, be anywhere discussed except in Parliament. Under such circumstances, the arguments generally assume a popular, more than a strictly legal cast, and are not so severely weighed as they would be in judicial scales. In the United States, all our Governments, State as well as National, are limited by written constitutions; and the Executive, Legislative, and Judicial powers are all practically required to be circumscribed within the specified limits of the constitutions. Hence, in Courts of Justice, a discussion not unfrequently arises as to the constitutional character of an act of the Executive or Legislative; and the ultimate decisions of such points rest with judicial tribunals. From these circumstances, the arguments in such cases often assume a peculiarly elementary cast, and go deeply into the nature and extent of the legislative power and its necessary limits when applied to free Governments.

It so happened, that while the British Parliament was engaged in discussing the abuses of Charitable Institutions in England, and the nature and extent of the remedies which Parliament could justly apply, some questions of an analogous nature were discussed in our Courts of Justice; and the constitutional authority of our legislatures to interfere with and alter the charters of charitable corporations seriously denied. I have thought that it might not be uninteresting to you to know the views which are entertained in America on this subject, and to read the decision which has been pronounced by the Court of the last resort. If I do not mistake, you have taken a deep interest in Parliament, in the recent measures adopted there; and Lord Eldon, I hope, may be gratified by perceiving how strictly his own principles have been adopted in America, as to the rights and duties of charitable corporations, at a time when such a coincidence of



opinion was unknown to all of us. I have therefore sent you two copies of the case of the Trustees of Dartmouth College against Woodward, one of which I beg you to accept, and the other to give to Lord Eldon as a slight mark of my respect for his judicial character. . . .

We have felt in our country the effects of a transition from a state of war to that of peace; and our commerce has been unavoidably abridged by the efforts made by other nations to carry on their own trade in their own ships. This was to be expected; and as it conduces to their own prosperity and comfort, we have little right to complain. The effect probably will be to introduce a more rigid economy in our various branches of trade, and perhaps to check that undue tendency to wasteful expenditure, which the general prosperity of our commerce had previously cherished. We are beginning also to become a manufacturing nation; but I am not much pleased (I am free to confess) with the efforts made to give an artificial stimulus to these establishments in our country. The example of your great manufacturing cities, apparently the seats of great vices, and great political fermentations, affords no very agreeable contemplation to the statesman or the patriot, or the friend of liberty. For myself I would wish my country long to remain devoted to agriculture and commerce, because they nourish a lofty spirit of independence and enterprise, and preserve a sound and healthy population. And I shall rejoice, when the day arrives, if it ever do arrive, in which I can see the trade of the United States and Great Britain thrown completely open at home and in the colonies; that we may supply the raw materials, and receive in return your beautiful fabrics. At present, although our newspapers are crowded with complaints of the badness of the times, we are in reality free from all suffering. Labor is cheap, and provisions are cheap also; our agriculture is increasing, and our commerce, though circumscribed, is thrifty. . . .

I find that Mr. Hargrave in his *Collection of Law Tracts*, mentions in his preface to the volume, that there is in his



possession a manuscript Dissertation of Lord Hale on the Admiralty Jurisdiction, which he proposed to publish. Will you allow me to ask if it has been printed? My inquiries have been a good deal directed to this subject; and the views of Lord Hale would be extremely interesting. Of the decisions in the High Court of Admiralty I have seen none later than the first volume of Mr. Dodson. It would be a very acceptable present to the profession, if he would continue to publish them; and the practice and divisions on the Instance side of the Court would be as instructive to us as those which have adorned the Court of Prize.

I have the honor to remain, with the highest consideration and respect,

Your most obliged and obedient servant,

JOSEPH STORY.

The desire expressed in the previous letter to obtain a copy of Lord Hale's manuscript Dissertation on the Admiralty Jurisdiction, shows the eager spirit of investigation which animated my father in his studies. He was not content with mastering the printed works on the subject, but he sought out those which were more hidden from the public eye, restless so long as any means of knowledge was untried. It was through this habit of exploring principles to the fountain-heads of authority, and gathering knowledge from every source, that he accumulated those large materials of thought, which enabled him so to distinguish himself as a jurist. At a later time, and by his request, his friend, Mr. Charles Sumner, sought out the manuscript of Lord Hale, then in the Library of the British Museum in London, and, at a considerable expense, obtained a copy of it, which was in my father's library at his death.

In November, 1820, in consequence of the separation

of Maine from Massachusetts, a Convention was called to revise the Constitution of the latter State, to which my father was elected as a delegate from Salem. Here again, within the same walls, which had witnessed his youthful ardor in the political arena, he returned ripened in powers, and calmer in judgment, to consult for the good of his native State, and to lend his aid to the establishment of a sound Constitution. Here again he lifted his voice, in the same cause which he had already more than once so earnestly pleaded, and advocated the permanence of the judicial tenure and salary, as the safeguard of the Judiciary against the influence of popular clamor, and the only guaranty of the unbiased administration of justice. Among the distinguished minds which adorned this convention were those of John Adams, then westering after his long and distinguished career, and of Daniel Webster, then culminating towards the zenith of his powers and reputation. In the councils of these and others, the choicest minds of his native state, my father joined, and by his eloquence and power in debate aided greatly in the victory then won for the judiciary. Of the part which he took in this Convention, he says in the Autobiography, —

“ My principal labors were in the great Committee on the subject of the representation in the House, whose debates were necessarily private. I there advocated the District System and apportionment of representatives according to population, so as to reduce the number to a comparatively moderate number. The plan, though supported by some of the ablest of the Committee, and particularly by Mr. Prescott, failed in Committee, and we agreed to support the next best plan, which should reduce the representation. It was that



which was afterwards adopted by the Convention, but which failed with the people from causes wholly accidental, and aside from its merits. I now regret that I did not write out the substance of the speeches which I delivered in the Convention. Except in a single instance I never furnished even a note; and the best speech which I delivered (I do not mean to state what its merits were) is scarcely touched in the printed debates. I mean the speech on the question of amending the Constitution so as to allow the Legislature the power to diminish, as well as increase the salaries of the Judges. This proposition I opposed *totis viribus* in an elaborate argument; and obtained a triumphant vote in the negative, after it had been carried the other way by a very large majority. From accidental circumstances, this speech was reported less fully than any other; and indeed I may say, that not a single speech of mine is given with any thing like fulness or accuracy. Mr. Webster, with great propriety and foresight, corrected all his own. I now regret that I did not undertake a similar labor; '*sed pereunt labores!*'"

The following letter, written upon the introduction into the Legislature of Massachusetts, in 1844, of a bill to diminish the salaries of the Supreme Court of that State, gives an account of this debate, and is also interesting as showing my father's scrupulousness in abstaining from any act which might have a political bearing.

TO CHARLES SUMNER, ESQ.

Washington, January 22d, 1844.

MY DEAR SIR:

I take the earliest opportunity to write you, in reply to your inquiry respecting the debate in the Convention of Massachusetts in 1820, respecting the salaries of the Judges of the Supreme Judicial Court. That debate I shall never



forget. For eloquence, for vivid and powerful reasoning, for warm, vehement, and varied discussion, it was not exceeded by any debate in that Convention, on any subject, even if it was equalled. All the leading speakers addressed the Convention upon that occasion. It is a subject of great surprise as well as mortification, that this debate was never reported, owing, I believe, to accidental circumstances. Indeed, the printed volume of debates barely alludes to it, and so obscurely, that it is difficult to ascertain precisely the origin and nature of the debate. Probably the unprinted Journal of the Convention gives the true statement of it.

You may remember, that there is a clause in the Constitution, which declares that the Legislature shall have authority to increase the compensation of the Judges of the Supreme Judicial Court. A motion was made by a member, to add the words "or diminish"; that motion was spoken to very briefly on either side, as it was supposed that a great majority would be found against the proposition. The vote was taken, and to the perfect surprise of all, it was carried by a majority.

A motion was immediately made to reconsider the vote, and it was upon that motion, that the debate to which I have alluded, took place. It occupied the whole session of Convention during the forenoon. The argument in favor of the amendment, was, that by the existing Constitution, the salaries might be increased but could not be diminished; and it was suggested that in this way an inordinate compensation might remain forever without change. The argument against the amendment admitted that, under the existing Constitution, the Legislature had not power to diminish the salaries, and in this it agreed entirely with the other side. But it was contended that this was indispensable to secure the independence, the purity, and the beneficial operation of the Judiciary. That any other course would subject the Judges to the complete control of the Legislature; for a command over the means of subsistence, was a command

over the men. That it would be utterly impossible to obtain the services of the most learned and elevated in the profession, unless the compensation was beyond the reach of political, party, or other motives on the part of the Legislature. That the citizens had no protection for their rights or their property, but both must be dependent on the legislative will, unless the Judiciary possessed the ability and the independence to resist any and all oppression, intentional or accidental, under color of laws enacted for party purposes, or under hasty excitements or popular prejudices.

I do not pretend to give you even an outline of the debate, but merely to suggest some of the topics, and barely enough to show that the friends and the opponents both admitted, that under the existing constitution no diminution of the salaries could be made. I wish it were possible now to recall the brilliancy and force and learning which were brought forward against the amendment. In my whole life I never heard any debate which excelled it. So triumphant was it, that a very great majority of the Convention, from two thirds to three quarters, rejected the amendment at its close. This was then treated on all sides as a final settlement of the question.

When you consider the manner in which that Convention was formed, composed as it was of gentlemen of the highest talents and character, and without any reference to political parties or objects, the weight of its decision might seem to be absolutely irresistible.

I have no unwillingness that you should show this letter to any of our common friends; but I cannot consent to its being made public, or printed. Nor, upon reflection, should I choose that it should be read in any caucus; simply because, not being engaged in political discussions, I desire to avoid even the appearance of connecting myself with any legislative measures.

I can only add that I have never had a doubt that under the existing Constitution, the Legislature does not possess



the power to diminish the salaries; and so was my vote in the Convention of 1820.

I am, most truly and affectionately, yours,

JOSEPH STORY.

P. S. I wish to add, that in my judgment the fact that the State Court in Massachusetts has always held the very first rank in the Union is in a great measure owing to the increase of the Judges' salaries in 1808. But for that, my opinion is, that Massachusetts would long since have fallen back into the second or third rank of States, in its administration of justice.

Of this speech I have been told by those who heard it, that it was so brilliant, and poured forth with such a fulness of diction, and rapidity of utterance, that the reporters, in the delight of listening, forgot the duty of reporting. My father always asserted it to have been the best speech he ever made. And there are many yet living who can bear testimony to its power, logic, and eloquence.

The speech made by my father in this Convention, on the question of the proper basis for the apportionment of State Senators, was partially and imperfectly reported, and was never written out by him. But imperfect as the report is, it has the sterling bullion of eloquence, — the eloquence of a sound mind and a heart full of large sympathies and peaceful desires. It is without exaggeration and overstatement, free from the tinsel and trickery of declamation, strong, simple, and persuasive. Much of his colloquial turn of expression has been preserved, but the report is wanting in fulness, finish, and welding of parts. The following are extracts: —

"Gentlemen have argued, as if personal rights only were



the proper objects of government. But what, I would ask, is life worth, if a man cannot eat in security the bread earned by his own industry? if he is not permitted to transmit to his children the little inheritance, which his affection has destined for their use? What enables us to diffuse education among all the classes of society, but property? Are not our public schools, the distinguishing blessing of our land, sustained by its patronage?

“I will say no more about the rich and the poor. There is no parallel to be run between them, founded on permanent constitutional distinctions. The rich help the poor, and the poor, in turn, administer to the rich. In our country, the highest man is not above the people; the humblest is not below the people. If the rich may be said to have additional protection, they have not additional power. Nor does wealth here form a permanent distinction of families. Those, who are wealthy to-day, pass to the tomb, and their children share their estates. Property is thus divided quite as fast as it accumulates. No family can, without its own exertions, stand erect for a long time under our statute of descents and distributions, the only true and legitimate agrarian law. It silently and quietly dissolves the mass, heaped up by the toil and diligence of a long life of enterprise and industry. Property is continually changing, like the waves of the sea. One wave rises, and is soon swallowed up in the vast abyss, and seen no more. Another rises, and having reached its destined limits, falls gently away, and is succeeded by yet another, which, in its turn, breaks, and dies away silently on the shore. The richest man among us may be brought down to the humblest level; and the child, with scarcely clothes to cover his nakedness, may rise to the highest office in our government. And the poor man, while he rocks his infant on his knees, may justly indulge the consolation, that, if he possess talents and virtue, there is no office beyond the reach of his honorable ambition. It is a mistaken theory, that government is founded for one object only. It is organized for

the protection of life, liberty, and property, and all the comforts of society; to enable us to indulge in our domestic affections, and quietly to enjoy our homes and our firesides."

The speech thus concludes:—

"I hope that this system will be adopted by a large majority, because it can scarcely otherwise receive the approbation of the people. I do not know that it is even desirable that the people should, nay, I might go further, and say that the people ought not to, adopt any amendment which comes recommended by a bare majority of this Convention. If we are so little agreed among ourselves, as to what will be for the future public good, we had much better live under the present constitution, which has all our experience in its favor. Is any gentleman bold enough to hazard the assertion, that any new measure we may adopt, can be more successful? I beg gentlemen to consider, too, what will be the effect, if the amendments we now propose should be rejected by the people, having passed by a scanty majority. We shall then revert to the old Constitution; and new parties, embittered by new feuds, or elated by victory, will be formed in the State, and distinguished as Constitutionalists, and Anti-Constitutionalists; and thus new discontents and struggles for a new Convention will agitate the Commonwealth. The revival of party animosities, in any shape, is most deeply to be deprecated. Who does not recollect with regret the violence with which party spirit in times past raged in this State, breaking asunder the ties of friendship and consanguinity? I was myself called upon to take an active part in the public scenes of those days. I do not regret the course which my judgment then led me to adopt. But I never can recollect, without the most profound melancholy, how often I have been compelled to encounter, I will not say the evil, but averted eyes, and the hostile opposition of men, with whom, under other circumstances, I should have rejoiced to meet in the



warmth of friendship. If new parties are to arise, new animosities will grow up, and stimulate new resentments. To the aged in this Convention, who are now bowed down under the weight of years, this can, of course, be of but little consequence; for they must soon pass into the tranquillity of the tomb. To those in middle life it will not be of great importance; for they are far on their way to their final repose; they have little to hope of future eminence, and are fast approaching the period, when the things of this world will fade away. But we have youth, who are just springing into life; we have children, whom we love; and families, in whose welfare we feel the deepest interest. In the name of Heaven, let us not leave to them the bitter inheritance of our contentions. Let us not transmit to them enmities, which may sadden the whole of their lives. Let us not, like him of old, blind, and smitten of his strength, in our anger seize upon the pillars of the Constitution, that we and our enemies may perish in their downfall. I would rather approach the altar of the Constitution, and pay my devotions there; and, if our liberties must be destroyed, I for one, would be ready to perish there in defending them."

The next letter relates to this Convention.

TO HON. JEREMIAH MASON.

Salem, January 21st, 1821.

MY DEAR SIR:

I have been deeply engaged in our late Convention, not so much in proposing schemes of my own, as in watching those of others. During a short period, I was myself quite indisposed; and my little daughter was most dangerously ill, but is now recovered. With the exception of this period, I was a constant attendant at the Convention for its two months' sittings. There was a great deal of very earnest and interesting discussion; and at times a considerable portion of manly eloquence. There was a pretty strong body of Radi-



cals, who seemed well disposed to get rid of all the great and fundamental barriers of the Constitution. Another class still more efficient and by no means small in number, was that of the lovers of the people, *alias*, the lovers of popularity. The combination of these two classes sometimes defeated us, and always pressed us with difficulties. But after all these deductions, there was a strong body of sound, reflective, intelligent men, who listened and were convinced, and marched onward with a steady eye to the public good. On the whole, I never knew so great a number of men, who seemed to be so deliberative, upon whom argument produced so powerful and wholesome an effect, and who would be so completely taken away from their own obstinate prejudices. I firmly believe that those who ultimately prevailed in the Convention, were always a minority in number, but with a vast preponderance of talent and virtue and principle. It was no small thing to prevent sad mischiefs to the Constitution. The struggle on our part was not for victory, but for the preservation of our best institutions. We were for the most part on the defensive; and it is no small source of congratulation to us that we have repelled the most popular attacks. The amendments proposed, I think, on the whole, good. At least they were the best we could obtain, and in some respects we were triumphant, as to the judiciary and Harvard College in particular.

Our friend Webster has gained a noble reputation. He was before known as a lawyer; but he has now secured the title of an eminent and enlightened statesman. It was a glorious field for him, and he has had an ample harvest. The whole force of his great mind was brought out, and in several speeches he commanded universal admiration. He always led the van, and was most skilful and instantaneous in attack and retreat. He fought, as I have told him, in the "imminent deadly breach;" and all I could do was to skirmish in aid of him upon some of the enemy's outposts. On the whole, I never was more proud of any display than

his in my life, and I am much deceived, if the well-earned popularity so justly and so boldly acquired by him on this occasion, does not carry him, if he lives, to the Presidency.

Very truly and affectionately,

Your obliged friend,

JOSEPH STORY.

The next letter was written from Washington, and announces the final passage of the bill admitting Missouri as a State into the Union.

TO WILLIAM FETTYPLACE, ESQ.

Washington, February 28th, 1821.

DEAR BROTHER:

I received your letter of the 16th instant, inclosing one from my wife, the day before yesterday. The badness of the roads prevented an earlier and regular arrival of the mails.

There is nothing new here, except that Missouri has been finally and prospectively admitted to the Union, upon a compromise reported by the Joint Committee. The bill has passed the Senate to-day, having previously passed the House; so that it waits only the signature of the President.

The Bankrupt Bill has been under discussion in the House of Representatives all day. The enemies of it have attempted every possible course to defeat it; they have moved an indefinite postponement, which was finally rejected by a majority of at least twenty. Previous to taking this question, there was a succession of motions to adjourn; and calling for the yeas and nays on each side, with a view to exercise the time and patience of the House; which motions, however, failed, the majority determining to stand steady until the question of indefinite postponement was decided. I begin to believe that the bill will pass, and without amendment. If amended, it will be lost, and therefore the friends of the bill



will resist every attempt to amend. There is a great excitement on the subject. Mr. Clay has behaved nobly; he delivered in the course of this day a most eloquent, pathetic, and manly speech in its favor; he deserves infinite credit, as, but for his exertions, the bill would be inevitably lost. It is generally now believed that the bill will pass, though its enemies will make every possible effort to defeat it. The scene of this day was a small specimen of what will doubtless take place. It was truly undignified, not to say tumultuous. The House did not adjourn till about half-past seven o'clock.

We have had some very interesting Constitutional questions argued at this term. The only one which has yet excited much public attention, is one from Virginia, on the right to sell lottery tickets there, in a lottery authorized by Congress for the benefit of the City of Washington. It is not yet decided. We are to take up, in a few days, another question, whether a State can give to any person an exclusive right to navigate its waters with steamboats, against the right of a patentee, claiming under the laws of the United States. The case comes from New York, and Mr. Emmett of New York, and Mr. Pinkney are on one side; and Mr. Webster, Mr. Ogden, of New York, and Mr. Wirt, the Attorney-General, on the other. The arguments will be very splendid. . . .

Believe me very sincerely and affectionately,

Your friend and brother,

JOSEPH STORY.

The Bankrupt Bill, mentioned in this letter, was rejected. The case involving the question of the right to sell lottery tickets, was *Cohens v. Virginia*, (6 Wheat. R. 264.)

The two succeeding letters contain an account of a visit to Mount Vernon, and of the inauguration of President Monroe.



TO MRS. JOSEPH STORY.

Washington, February 27th, 1821.

MY DEAR WIFE:

I should have written to you on Sunday last, but for my absence from the city. Judge Livingston, Judge Todd, and myself, went to Alexandria, which is about seven miles from the city, on Saturday afternoon, and passed the night there. Our object was, to see Judge Washington, and on the next day to visit Mount Vernon. We found Judge Washington at Alexandria; his health is somewhat improved, but still he is feeble, and I think it improbable that at his age he will ever be completely restored. On Sunday morning, about nine o'clock, we left Alexandria for Mount Vernon, a distance of nine miles, and after a tedious journey over a most wretched and uncomfortable road, arrived there in about two and a half hours. The approach to the mansion house is through narrow avenues, and by no means inviting. From the height on which the house stands, which is a fine elevation, overlooking a great extent of country, the Potomac is seen winding its way through a distance of nearly forty miles. The prospect is grand and striking, but the grounds about the residence were less cultivated than I expected. The mansion house itself is a long two-story building, of wood, having no elegance of architecture or design; and now venerable in years, and venerable for the sake of those who have inhabited it. The front of the house looking towards the river, has a colonnade the whole length, of rude columns supporting the roof, and the floor is paved with flat stones. The day was delightful, and I walked backwards and forwards for half an hour, in the very spot where President Washington had so often been while taking the refreshing breezes of morning and evening, or sitting in silence during the sultry heats of noon. Just below the slope of the hill on this side, and at no great distance from the river, is the tomb which contains the mortal remains of this truly great and wise man.

It is a humble, very humble, family vault, built of brick, on the declivity of the hill, and covered over with soil; and an old wooden door above the ground, now kept locked, is all that hides his coffin from the vulgar gaze. A few scattered cedars surrounded the tomb; they are old and drooping, and seem long to have toiled with the wintry blast; all about the tomb has the air of neglect and decay. I felt awed as I gazed upon the scene; it was a melancholy mixed with profound feelings.

We went into the mansion house, and visited all the rooms. They are small and old-fashioned, and suited for privacy. The chambers above appeared to be low, and the glass of the windows, and the windows themselves, were very small. Around the mansion were many trees that had been planted by the hand of Washington, and the gardens and grounds were laid out by him. In short, one saw his works in every direction; but there were general symptoms of decay visible; and I was sorry that so little effort was made to repair the silent ravages of time. Were I the owner of this seat, I would preserve every thing as nearly as could be in the style in which Washington left it, but I would not suffer any thing to moulder away neglected and forgotten.

I must soon go into Court, and therefore close my dull account of Mount Vernon. . . .

Adieu, and may God bless you,

Your faithful and affectionate husband,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, March 6th, 1821.

MY DEAR WIFE:

. . . Yesterday was the day appointed for the Inauguration of the President, upon his re-appointment to office. The weather was very inclement in the morning, a violent storm having set in. Towards noon, however, it abated, and a vast crowd was collected in the Capitol to witness the cere-



mony. It was, according to arrangement, to be performed in the Chamber of the House of Representatives. This is a most splendid and magnificent Hall in the shape of a horse-shoe, having a colonnade of marble pillars round the whole circular sweep, which ascend to, and support a lofty dome. The galleries for spectators are about mid-way the pillars, and the seats gradually rise as they recede. The hall was early thronged with ladies and gentlemen of the first distinction, who had come from the neighboring cities to witness the scene. The whole area was crowded to excess, and the galleries appeared to be almost weighed down by their burden. About twelve o'clock the President came into the hall, dressed in a plain suit of black broadcloth, with a single-breasted coat and waistcoat, the latter with flaps in the old fashion. He wore also small-clothes, with silk stockings and shoes with gold buckles in them. His appearance was very impressive. He placed himself in a chair usually occupied by the Clerk of the House of Representatives, facing the whole audience. On his right was the President of the Senate, and on his left the Speaker of the House. The Secretaries of all the Departments sat in a row on the right, and on the left, all the foreign ministers and their suite, dressed out in their most splendid court dresses, and arranged according to their rank. Immediately in front of the President, at a small distance, were placed seven chairs for the Judges, who, upon notice, after the arrival of the President, went into the hall in their judicial robes, attended by the Marshal. The Chief Justice was immediately requested to take the chair on the left of the President, who soon afterwards rose, and the Chief Justice administered the oath of office. The President then delivered his inaugural speech, the Chief Justice, the foreign Ministers, the President of the Senate, and the Speaker of the House remaining standing. The rest of the audience, wherever they could, remained seated. As soon as the speech was concluded, the marine corps of musicians who were in the gallery, played "Hail, Colum-



bia," which was succeeded by "Yankee Doodle," and after some hurrahs from the crowd, the President received the congratulations of the assembly and retired. Altogether, the scene was truly striking and grand. There was a simple dignity about it which excited very pleasing sensations. The fine collection of beautiful and interesting women, dressed with great elegance, the presence of so many men of talents, character and public services, civil and military, — the majestic stretch of the hall itself, the recollection of our free and happy situation, all combined to produce a most profound feeling of interest. I do not know that I ever was more impressed by a public spectacle.

As I closed the last sentence, I was called away to breakfast, and perhaps you will not think it amiss, as I was beginning to grow garrulous upon an old subject not very interesting to persons at a distance. I will only add, that after the ceremony was over, the etiquette was to throng to the President's house, there to congratulate him and Mrs. Monroe upon the happy auspices of a new reign. All the world was there; hackney coaches, private carriages, foreign ministers and their suites, were immediately in motion, and the very ground seemed beaten into powder or paste, under the trampling of horses and the rolling of wheels. The scene lasted until three o'clock, and then all things resumed their wonted tranquillity.

The city will now soon become deserted, as Congress has risen, and the members are already principally gone. The office-seekers, the speculators, the idlers, the votaries of pleasure, the very applicants for relief are slowly passing away like the sparks of an expiring paper when consumed in the fire. There will soon be on Capitol Hill a general desert, or at least a general silence, scarcely disturbed by the morning baker, or the evening post-boy.

I do not begin to be, but I seriously am tired of the scene; I long to be by my own fireside; to play with the children, and talk over with you all our little domestic interests and

incidents. It is dull as death to be cooped up here with nothing but law records, and law books, which one feels no inclination to peruse; and I am wearied with the same faces and the same never-failing uniformity of all things. If it be so with me, I feel how much more so it must be with you. I feel unhappy at your solitary situation, and wish to relieve you from its solemn anxiety.

I hope we shall not sit longer than the 17th of March, but this is uncertain as yet, for we have a great deal of business before us.

In haste, your faithful and affectionate husband,

JOSEPH STORY.

To his early friend, Mr. Bacon, to whose influence he always considered that his appointment to the Bench was mainly due, and for whom he maintained, throughout life, a warm esteem and friendship, he thus writes during this year:—

TO HON. EZEKIEL BACON.

Salem, September 9th, 1821.

MY DEAR SIR:

I thank you for your late letter, which I received by the mail of yesterday. If I were surprised at any thing in politics, it would be that your real republicanism and general attachment to its principles should be called in question. I know that you are not, and never were a mere office-seeking politician, and are not ready to abandon your principles with the same facility as men are accustomed to change the fashions of their dress. But, my dear sir, this is the very reason why your patriotism and honor will be doubted, because you are incorruptible, and will not lend your aid on all occasions to subserve the temporary objects of party. The first object of the popular leaders of the day is to win over to their own purposes those who are respectable and com-



mand influence; if they fail in this, their next object is to destroy that influence and respectability, by diminishing public confidence *per fas aut nefas*. You may however take comfort to yourself, for you are not solitary in this respect. I also am, as I presume, no longer deemed a true patriot, because I happen to resist all attempts to deceive and delude the people, and content myself with an earnest devotion to the duties of my office.

I have recently had a visit from Mr. Wheaton, and conversed with him very fully on the subject of the Judiciary, and endeavored to strengthen his resolution in those principles on this subject, which all wise men must cherish and approve.

I am glad to see you in public life, and hope you will again be in Congress. We want honest and enlightened men in our public councils, and disgusted as you well may be at the unequal distribution of public favor and public honors, you ought to consider that there are many wise and good men in private life, who truly respect you, — whose applauses may perhaps never reach your ears; there is too an approving conscience, which is, after all, the surest consolation on earth.

I shall always rejoice in your prosperity. You were my early friend, and I shall always remember it with affectionate gratitude. I am now removed from political life, but I look with deep interest upon those who remain in it, and no one has more of my solicitude than yourself. Few republicans can justly boast of having been so steady, firm, and consistent as you, and none that they are more pure.

I am, dear sir, in great haste,

Your old and affectionate friend,

JOSEPH STORY.

The following letter relates to the publication of Mr. Greenleaf's valuable collection of *Overruled Cases*, and is



principally interesting as exhibiting the zeal and interest with which my father participated in all the labors of his friends, and the willingness with which he gave to their aid the little spare time left him in the intervals of his own pressing labors.

TO SIMON GREENLEAF, ESQ.

Salem, December 11th, 1821.

MY DEAR SIR:

I am glad to hear that your *Overruled Cases* are printed. I want to get a copy, and interleave it, so as to provide gradually for a new edition. You must not feel too anxious about your Reports. A young author is apt to be unduly sensitive as to the fate of his productions. I have no doubt as to the success of yours; and I am sure that the profession will join heartily in your favor.

As to additional rules on Equity causes, what Mr. Longfellow has stated to you will probably be done. The Supreme Court of the United States have referred it to the Chief Justice to draw up a series of rules to regulate the practice in all the Circuits. If he should not accomplish the task, as I fear he will not, I shall think it my duty in the spring to prepare rules for my own Circuit, so minute and detailed, as to open the whole course of Equity Proceedings. It would cost me perhaps a month's trouble, but in the state of our equity jurisprudence, it appears to me to be very important and almost indispensable.

I wish you to consider me as a subscriber to your Reports. Your compensation is not such as ought to induce you to give away a single copy; and by subscribing for the work I believe I shall do some good in the way of aiding its circulation.

I send you an additional list of late overruled cases, which you can use when you have occasion. I mean to enlarge it from time to time, as I read and write.

Pray do not think that any thing in which I can aid you, will be a labor to me. I shall cheerfully do what you may wish at any time.

Yours, very sincerely,

JOSEPH STORY.

The Chief Justice did not draw up the Rules of Practice in the Circuit, which are alluded to in this letter, and in consequence my father prepared very full and careful rules for his own Circuit, regulating the whole course of Equity Proceedings. At a late date (in 1842) he drew up the Rules of Practice in Equity for the Supreme Court of the United States, and all the Circuit Courts.

During this year the fourth volume of Johnson's Chancery Reports was published, and a copy was presented by the reporter to my father, who, in acknowledging it, thus comments on one or two important decisions in these Reports:—

TO WILLIAM JOHNSON, ESQ.

Salem, November 11th, 1821.

DEAR SIR:

I have received the eighteenth volume of your Term Reports, and the fourth volume of your Chancery Reports, and am extremely obliged to you for them. They both contain very valuable cases; and I wish I knew how I could acceptably return your kindness. I remember your asking me what my opinion would be as to *Percival v. Hickey*, 18 Johns. R. Although I should be sorry to be quoted on the subject, I confess my judgment does not go along with that case. It appears to me that where a belligerent cruiser does any act in the exercise of its rights as such, that mere excess or negligence in the mode of exercising it, cannot change the forum to which the jurisdiction belongs. A Court of Prize



has exclusive jurisdiction over all the incidents of capture, and over all the conduct of cruisers in the exercise of the right of search. In short, it appears to me that where a vessel is a commissioned cruiser, all her acts are to be referred to that character, unless she so conducts herself as to justify the imputation of piracy. I have no recollection of any case in which the act of a belligerent has been deemed a marine trespass; and I see great difficulties in sustaining the common law jurisdiction. If the *Mary* had been known to be an American vessel, and she had been wrongfully captured, it would have been a *tort* exclusively inquirable in the Prize Court. An act done with intent to capture her, or in the exercise of the belligerent right of search, falls, as I think, under the same head. How can a Court of Common Law inquire into the mode of examining the right of search, or give damages for negligence in exercising it?

I find that I am straying into reasoning on the case, instead of stating my opinion. I cannot answer the arguments of Mr. Ogden and Mr. Wells; but I think I can, at least satisfactorily to my own mind, answer their adversaries.

I had last summer occasion to decide a case in Rhode Island against the authority of *Anderson v. Roberts*, 3 Johns. Ch. R. 371. I did it with infinite reluctance; but I confess that I could not come to the doctrine, that a *bonâ fide* purchaser for a valuable consideration from a fraudulent grantee, could not protect himself against creditors. I met with a case in Godbolt, not cited before the Chancellor, which I thought in point in my favor. I find, by your last volume, that the Court of Errors have reversed the Chancellor's opinion. The doctrine in Massachusetts has been settled the same way as I have held for a long time, at least, in practice.

I have looked with great solicitude and pain at the doings of your Convention. My own short experience in the Massachusetts Convention satisfied me how dangerous it was to examine the principles of a constitution in such a body. I greatly fear that New York will add a melancholy sanction to



all my worst apprehensions. I am equally amazed and shocked at the attack upon your judiciary. It seems to me little short of political madness; and proves the dreadful extravagance of party spirit. I have always considered your judiciary as at the head of the Union. It will be a great public calamity to lose such men as Chancellor Kent and Chief Justice Spencer. And if your Convention were to look to the permanent dignity and character of the State, I am sure they would have sought to add to the length of their term of office. I do not indulge the rash hope, that, in my day, I shall ever see more able, learned, or independent Judges. I should deem it the highest honor to be an associate with them.

It cannot be, it is morally impossible, that any party should contemplate your removal from office. Allow me, my dear sir, to say that you have conferred the highest honor on the State; and that its judicial character abroad has been greatly elevated by your excellent Reports. If I say, that it will be difficult to find an equal successor, I say nothing more than all the American lawyers are ready to concede in your favor. Whatever may be your fortune in this respect, I hope you will always allow me the pleasure of considering myself among your true and earnest friends.

I am, with the highest respect,

Your obliged friend,

JOSEPH STORY.

On September 4th, 1821, at the request of the Suffolk Bar, my father delivered an address before them on the occasion of their Anniversary. This is an essay on the past and present state of the Common Law, and particularly on the actual condition of the Law in the United States. It is judicial in its structure, simple in its character, and without rhetorical ornament. He com-

mences with a brief, but spirited historical sketch of the Common Law, which he divides into three great epochs. The first, extending from the reign of William the Conqueror to the Reformation, during which the Feudal System flourished; the second reaching from the reign of Elizabeth to the Revolution, which placed William of Orange on the throne; a period distinguished by the abolition of Feudal tenures, the introduction of the writ of Habeas Corpus, and the passage of the great statutes of Wills and Uses; and the third or commercial epoch, inaugurated by Holt, and illumined by Mansfield in the Common Law, and by Nottingham, Cowper, Talbot and Hardwicke in Equity. After an eloquent notice of Mansfield, the author then proceeds to a consideration of the principal improvements which have been introduced into the Law, and the causes which have led to its advancement. Then turning to the Law in America, he briefly sketches its history, and after speaking at some length of the conflicts and coincidences of laws in the different States in respect to the Transfer of Property, Commercial Regulations, Remedies, Structure of Land Titles, Slavery, and Equity Jurisdiction, he enters into a critical view of its present condition, points out its deficiencies and the dangers which most easily beset it, and suggests the sources from which improvements are to be derived. In the course of the address he recommends the codification of the Common Law, a subject which he afterwards developed with much earnestness, and makes a noble vindication of the study of Constitutional and International Law, which shows his lofty conception of their influence and value. The following passage is very characteristic.



“There is yet another study, which may well engage the attention of American lawyers, and be, in the language of Lord Coke, both honorable and profitable to them. I mean the study of the Law of Nations. This is at all times the duty, and ought to be the pride of all, who aspire to be statesmen; and, as many of our lawyers become legislators, it seems to be the study, to which, of all others, they should most seriously devote themselves. Independently of these considerations, there is nothing, that can give so high a finish, or so brilliant an ornament, or so extensive an instruction, as this pursuit, to a professional education. What, indeed, can tend more to exalt and purify the mind, than speculations upon the origin and extent of moral obligations; upon the great truths and dictates of natural law; upon the immutable principles, that regulate right and wrong in social and private life; and upon the just applications of these to the intercourse, and duties, and contentions of independent nations? What can be of more transcendent dignity, or better fitted to employ the highest faculties of genius, than the development of those important truths, which teach the duties of magistrates and people; the rights of peace and war; the limits of lawful hostility; the mutual duties of belligerent and neutral powers; and which aim at the introduction into national affairs of that benign spirit of Christian virtue, which tempers the exercise even of acknowledged rights with mercy, humanity, and delicacy? If the science of jurisprudence be, as it has been eloquently described to be, “the pride of the human intellect,” and “the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns,” where can we find more striking proofs of its true excellence, than in the study of those maxims, which address themselves to the best interests and the most profound reflections of nations, and call upon them, as the instruments of Providence, to administer to each other's wants, to check inordinate ambition, to support the weak, and to fence in human infirmity, so that it



can scarcely transcend the bounds of established rules, without drawing after it universal indignation and resistance? Yet, how few have mastered the elementary treatises on this subject, the labors of Albericus Gentilis, and Zouch, and Grotius, and Puffendorf, and Bynkershoek, and Wolfius, and Vattel? How few have read with becoming reverence and zeal the decisions of that splendid jurist, the ornament, I will not say of his own age or country, but of all ages and all countries; the intrepid supporter equally of neutral and belligerent rights; the pure and spotless magistrate of nations, who has administered the dictates of universal jurisprudence with so much dignity and discretion in the Prize and Instance Courts of England? Need I pronounce the name of Sir William Scott? How few have aspired, even in vision, after those comprehensive researches into the Law of Nations, which the Introductory Discourse of Sir James Mackintosh has opened and explained with such attractive elegance and truth?"

The discourse concludes with some general remarks in the course of which, my father dedicates a beautiful passage to the memory of Mr. Gallison, his pupil and friend and the Reporter of his Court, who had died during the year. In delivering this portion of the address, he was so overpowered by affectionate memories, that he burst into tears, and was unable to proceed for some minutes. How truly does this simple incident illustrate his sensitive and loving nature.

This address, which was printed in the first number of the *American Jurist*, was republished in England, in the "Cabinet Library of Scarce and Celebrated Tracts," as a companion discourse to that of Sir James Mackintosh on the Law of Nations, and is included in the collection of my father's *Miscellaneous Writings*.

The following letters, written from Washington during the year 1822, explain themselves.

TO HON. JEREMIAH MASON.

Salem, January 10th, 1822.

MY DEAR SIR:

If it were not a very common fashion, and therefore meant little, I would wish you and Mrs. Mason and your family a happy new year. I do more, I wish you many and pleasant years of private happiness and public honors,—and I may add, that no one will more sincerely participate in your political fame and advancement than myself.

I am glad you write somewhat encouragingly respecting the Judiciary. My only hope is in the discordant views of the various interested factions and philosophers. Mr. Jefferson stands at the head of the enemies of the Judiciary, and I doubt not will leave behind him a numerous progeny bred in the same school. The truth is and cannot be disguised, even from vulgar observation, that the Judiciary in our country is essentially feeble, and must always be open to attack from all quarters. It will perpetually thwart the wishes and views of demagogues, and it can have no places to give and no patronage to draw around it close defenders. Its only support is the wise and the good and the elevated in society; and these, as we all know, must ever remain in a discouraging minority in all Governments. If, indeed, the Judiciary is to be destroyed, I should be glad to have the decisive blow now struck, while I am young, and can return to the profession and earn an honest livelihood. If it comes in my old age, it may find me less able to bear the blow, though I hope not less firm to meet it. For the Judges of the Supreme Court there is but one course to pursue. That is, to do their duty firmly and honestly, according to their best judgments. We should poorly deserve our places, and should want common honesty, if we shrink at the threats or the injuries of



public men. For one, though I have no wish to be a martyr, I trust in God I shall never be so base as to submit to intimidation, come when it may. I believe the Court will be resolute, and will be driven from its course, only when driven from the seat of Justice. . . .

I am, very truly and respectfully,

Your obliged friend,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, February 10th, 1822.

MY DEAR WIFE:

. . . . As yet the Court have hardly been seriously engaged in business. Mr. Wirt, the Attorney-General, was, a few days since, seized with an apoplectic fit, from the effects of which he is slowly recovering. This has deranged our docket of causes so much, that we have been struggling the whole week to find employment, and have had very little. Next week we shall doubtless make up for lost time.

We went to the President's on Monday to pay him our annual visit of ceremony. It so happened that, at the time, he was having an interview, and holding a talk with a considerable deputation of various tribes of Indians, from the most savage and distant parts. On this occasion they were all clothed in the dresses furnished them by the American Government, and painted and decked with the most grotesque ornaments. It was to me a spectacle entirely new. The President first made a speech to them, which was interpreted by various interpreters in single sentences, and at the end of each they returned a sort of murmuring sound in approbation. After this, the Chiefs stood up, and each in turn made a short speech to the President, which was in like manner interpreted. Their gestures and actions were very strong and marked, — their language emphatic, and though badly interpreted, there was now and then a flash of native eloquence, or beautiful figures which



surprised us. Nothing could exceed the masculine cast of their forms, or the bold, decisive character of their movements. They appeared under no embarrassment or fear, and some of them spoke with the air of monarchs. I was particularly impressed by one young man of a fine countenance, of whom I heard a very striking story. He observed, in his speech, that his father was a great warrior, and that he was dead, and that he in turn hoped to be a great warrior. His father was like the old grass dried up and withered, but from the roots he hoped would spring up a new crop. He said this with great modesty and firmness. The story respecting him is this: A young female Indian had been taken by some hostile tribe, and was condemned to death, and tied to a stake to be burned. He heard of it,—prepared two swift and excellent horses, tied them to a tree at a short distance, and suddenly, at the very moment the fire was putting to the pile, he broke forth, rushed to the stake, untied the female, and carried her off in triumph to the place where the horses were tied, put her on one of them, and rode thirty or forty miles with her, then directed her the way to her own tribe, and gave her the horse on which she rode. The assembly were astonished at his boldness, and so struck with it, that they were unable to gather courage to interfere when he rescued the victim. They looked on in astonishment, and thought that he might be some one sent by the Great Spirit, and not a mere mortal. He therefore was not overtaken in his journey, and now lives to enjoy the gratitude and admiration of the whole tribe. . . .

Yours affectionately,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, February 15th, 1822.

MY DEAR WIFE:

. . . I forgot to mention, in my letter respecting the Indians, that they all concurred in two things; first, that

they are averse to agriculture, and only wish to live by hunting; second, that they do not want missionaries, who they think could only be useful when they themselves were compelled to work, and could no more hunt deer and buffalo. I remarked also that they all expressed a perfect belief in the Great Spirit.

Your affectionate husband,

JOSEPH STORY.

The next letters relate to the illness and death of Mr. Pinkney.

TO MRS. JOSEPH STORY.

Washington, February 21st, 1822.

MY DEAR WIFE:

A melancholy affair happened here on Sunday. Mr. Pinkney, the distinguished orator and lawyer, was seized with an apoplexy, or some kindred disease. It was thought at first he would die, but hopes are now entertained of his recovery, though he still remains quite ill. He had sat up nearly all of the preceding night, reading, as we hear, the *Pirate*; but the real truth is that he has had an influenza for some days, and having last week exerted himself in Court to a very high degree, and being of a very plethoric habit, he probably accelerated a disease to which he was constitutionally inclined. The event has filled many of us who knew his great power and eloquence, his great brilliancy, genius, learning, and wit, with profound melancholy. And yet this calamity made but a momentary impression; and the next day it was as little thought of, except in the circle of particular friends, as if it were an event of a century ago. We were just sitting down to table, when the news reached us. It occasioned but a moment's pause; the dinner went on, and the laugh and joke circulated as if it were nothing worthy of notice. So true is Dr. Johnson's remark, "that no man will lose his dinner in consequence of the death of a friend at a



distance." Such is human life, and such human fame. If Mr. Pinkney were to die now, in one month it would scarcely excite concern, beyond the bosoms of the few who are his immediate relatives, and those who admire genius, and weep over its ruins. If he recovers, it is not probable that he will ever be what he has been. He will fear exertion, and to be less than the first, would depress him to the lowest melancholy. It is rather remarkable that at this time the same calamity, in nearly the same way, should have happened in this city, to two of our most distinguished men, Mr. Wirt, and Mr. Pinkney. . . .

Your affectionate husband,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, February 28th, 1822.

MY DEAR WIFE:

Before this reaches you, you will have heard of the death of Mr. Pinkney. He expired on Monday night, and yesterday his remains were committed to the grave with due solemnity. The pomp and splendor of the funeral exceeded any thing which I have hitherto seen. At an early hour the corpse was removed to the Senate Chamber, and all the members of Congress, members of the Court, and foreign ministers, attended. The coffin was placed in front of the President's chair. It was of mahogany, covered with black silk velvet, which was studded over with brass nails and with lacquered escutcheons. The chaplain of the Senate delivered an *extempore* discourse to the assembly. It consisted altogether in appeals of terror, and was in the true orthodox style, full of doctrinal dogmas and childish attempts to alarm and frighten. It was so entirely at war with the feelings of all present, that it served only to shock them, and to take away that deep and melancholy impression which every heart felt and every face exhibited.

At eleven o'clock the procession moved to the graveyard,



which lies at the distance of about a mile and a half, where are interred two Vice-Presidents, and several members of both Houses of Congress. The concourse was immense; the day was uncommonly fine and bright, but a settled gloom was over the countenances of all. Labor was generally suspended. To give you some idea of the length of the procession, I state that there were from one hundred and fifty to two hundred carriages attending in regular succession.

I returned from this truly depressing scene in deep affliction. It is impossible to contemplate the death of such a man without the most painful emotions. His genius and eloquence were so lofty, I might almost say so unrivalled, his learning so extensive, his ambition so elevated, his political and constitutional principles so truly just and pure, his weight in the public councils so decisive, his character at the Bar so peerless and commanding, that there seems now left a dismal and perplexing vacancy. His foibles and faults were so trifling or excusable, in comparison with his greatness, that they are at once forgotten and forgiven with his deposit in the grave. His great talents are now universally acknowledged. As Mason has beautifully said, in his *Elegy on Lady Coventry*,

"This envy owns, since now those charms are fled."

A curious circumstance has been related to me at this term, respecting a gentleman now attending this Court, which the melancholy associations of this time have brought to my recollection. The person to whom I refer, is Mr. Doddridge, eminent for his talents at the Bar, but who has unfortunately given himself up to a course of general intoxication. About two months since, he was suddenly seized with an apoplexy, palsy, catalepsy, or some disease of that nature, and the powers of life seemed entirely suspended. The physicians declared him dead, his wife supposed him dead, and the persons in the house proceeded to lay out his corpse. During all this time, he says he was per-

fectly in his senses, heard all that was said, but was totally unable to move a muscle, or to make the slightest exertion. While these things were going on, his wife thought she perceived a slight motion in one of his legs, the knee being drawn up. She supposed it an involuntary muscular motion, and on placing the limb down, it was again slightly moved; she was struck by the circumstance, raised his head high upon a pillow, rubbed him with brandy, and soon perceived a slight indication of returning life. He slowly revived, and is now here arguing causes. He says that the motion of his knees was voluntary; aware of his situation and all its horrors, he was just able to make this slight motion, and every time any one came near the bed, renewed it, until the motion was observed. This story is almost marvellous, but the gentleman has told it himself to one of the Judges, and the story has been confirmed by other gentlemen well knowing the facts.

I write to you while sitting in Court, and as the argument is now taking an interesting turn, I must stop and listen, but never do I expect to hear a man like Mr. Pinkney. He was a man who appears scarcely once a century.

Very truly and affectionately,

Your faithful husband,

JOSEPH STORY.

My father subsequently prepared a sketch of Mr. Pinkney, at the request of a friend, which will be found in the collection of his Miscellaneous Writings.

The estimate Mr. Pinkney had of my father, will appear in the following letter from Dr. Thomas Sewall to Hon. G. Barstow.

Washington City, March 28th, 1824.

DEAR SIR:

As to the observations I heard the late Mr. Pinkney make while I was attending him during his last illness, respecting



Judge Story, I think I stated them to you at the time, and you have probably as distinct a recollection of them as myself.

I will, however, repeat them as nearly as I can recollect. In speaking of Judge Story, Mr. Pinkney observed that he was a man of astonishing legal attainments, and that his knowledge was not like that of most great readers, a confused mass of rubbish, but that it had been so carefully selected, and so well digested and arranged by a discriminating and vigorous mind, that it gave him the command of the whole range of legal authorities.

He made a comparison between Judge Story and Chief Justice Marshall, which was highly honorable to the former.

He added several remarks expressive of his high opinion of the merits of Judge Story, and his worth to the Supreme Court.

With great respect,

Your friend and servant,

THOMAS SEWALL.

In returning from Washington, in the year 1822, the horses ran away with the coach in which my father was travelling, overturned it and threw him out, severely injuring his right shoulder. It occasioned him severe pain at the time, and was a "weather-gage" to him through his after life. Whenever the atmosphere dampened with the approach of rain, he began to feel twinges of pain in his arm. The following letter refers to this accident.

TO MRS. JOSEPH STORY.

New York, March 25th, 1822.

MY DEAR WIFE:

You will have heard of the unlucky accident which befell me; I was not much injured, and having been bled and purged, I am very much better, and shall certainly leave this city on Thursday in the steamboat. I write these lines while



I am sitting up to have my bed made, with a lame arm; I strained my right arm, my left thigh, and very slightly bruised my face. I have been all day in a profuse perspiration, and am not at liberty to write more, lest I should take cold. Kiss the children for me,

And believe me, affectionately, yours,

JOSEPH STORY.

The next letter refers to this accident, and to the Unitarian views entertained at Harvard College.

TO WILLIAM WILLIAMS, ESQ., NASHVILLE, TENN.

Washington, February 17th, 1823.

DEAR SIR:

I owe you an apology for not having answered at an earlier period your interesting letter. I did not receive it until late in the Spring, after my return home from Washington. I was then, and for a long time after, confined by sickness, partly occasioned by an injury I received by the running away of a stage coach, in my journey home, and partly by a feverish habit contracted during my residence at Washington. I was unable for a long time to use my right arm; and when I recovered its use, my judicial engagements were so constant during the summer and autumn that I had very little time left even for my private affairs. I hope you will receive this as the "*amende honorable*," and will feel assured that I received your letter with emotions of deep interest and kindness.

You speak of Harvard College. Its prosperity in literature and science is truly great, and, in my judgment, place it beyond all question as the first literary institution in America. You have doubtless heard many misrepresentations as to its religious character. I will not disguise that the religious sentiments of its present President and Professors are far more liberal than those of our good Doctor Tappan. By liberal, I mean less Calvinistic and more charitable. Unitarianism

rian sentiments are certainly prevalent there; but they are not taught as a part of the studies. If taught at all, they are the natural result of dwelling among men, who cherish them with fervent piety and most sincere affection. I may say, indeed, that by far the most enlightened, learned, and able of our present clergy, as well as laity in Massachusetts, are Unitarians, and their opinions are manifestly gaining ground. This, of course, gives much uneasiness to other States, and as usual gives rise to many false statements and numerous attempts to cast odium upon its profession in Church and State. But the day is passing away in which much mischief in Massachusetts can grow up from this cause. Our classmate, Dr. Channing, is an Unitarian minister of most distinguished talents and character. There are many of the most elevated piety of the same opinions among us. If you wish to have a child educated at Cambridge, I do not think you need fear that his religious obligations and feelings will be injured. But in making these remarks, I beg you to understand that I myself am a decided Unitarian. If you have attended to the controversy, I think you will find great ground for charity for our opinions, even if you should not hesitate to reject them.

I should be truly happy to hear of you at all times, and beg you to believe me,

With great respect and esteem,

Your obedient friend,

JOSEPH STORY.

The next letter was in answer to one from Mr. Webster, introducing the Rev. Mr. Gurley, and contains my father's views on the subject of African colonization. The last sentence of Mr. Webster's letter is a tribute to my father's exertions in behalf of the slave. He says,—

“At any rate, my dear sir, you have discharged your duty



before God and man on the subject of African slavery, and you must not be surprised if more should be expected from him who has done so much so admirably."

TO THE HON. DANIEL WEBSTER.

Salem, August 6th, 1822.

DEAR SIR:

I have had the pleasure of conversing with Mr. Gurley upon the interesting subject of the African Colonization. My own faith of the practicability of the scheme has never been strong, and I have never affected to disguise it. Still, however, I am ready to accede to any plan to give it a fair chance of success. For, I agree with you in thinking that we ought not to despair, when such men as Judge Washington and Mr. Key are so deeply and earnestly in the belief of its success.

I am ready to subscribe as a donor to the extent of what I think my reasonable share. It has occurred to me, however, that we might do more by a general meeting of friends in Boston to consult on the subject. If it should be thought best to organize an auxiliary society, that may be done with advantage, and will probably secure permanent contributions. If it is thought not best to attempt such an organization, still we could recommend the institution to patronage, and thus, from immediate donations, aid its plan. If neither the one nor the other scheme should be approved, I am still, as one, ready to contribute my mite, and leave the event to Providence. I believe the Colonization Society has now one good effect, and that is to nourish a strong distaste for slavery among the most kind and benevolent of the Southern States; and it gives countenance to them in cherishing a public enthusiasm in favor of the ultimate emancipation of slaves. I think I have perceived a growing feeling of the injustice of slavery among all those who have been ardently attached to its objects. This is no inconsiderable gain.

If in Boston you should think a meeting useful, I incline to



think that Mr. Pickman, Judge Putnam, Judge White, Col. Pickering, Mr. Saltonstall, and others might be willing to attend, and aid in the object.

I hope that we may yet live to see the general doctrine, which you have contributed so much to establish, universally admitted, that the slave trade is against the law of nations, as I think it is against the eternal laws of nature.

I am, dear sir, most truly and affectionately, yours,

JOSEPH STORY.

The following letters were written during this session, and relate partly to the business of the Court, a large share of which was necessarily thrown upon my father, in consequence of the illness and absence of three of the Judges.

TO THE HON. MR. JUSTICE TODD.

Washington, March 14th, 1823.

MY DEAR JUDGE:

We have all missed you exceedingly during this term, and particularly in the Kentucky Causes, many of which have been continued, solely on account of your absence. God grant that your health may be restored, and that you may join us next year.

Poor Livingston has been very ill of a peripneumony, and is still very ill; whether he will ever recover is doubtful. I rather think not. At one time he was supposed to be dying; but he has since been better, and now again has had a relapse. There is great reason to believe that he will never, even if he recovers, be a healthy man again. He is attended by his wife and daughter, and two physicians.

Judge Washington has also been quite sick, and was absent for a fortnight. He is now recovered. The Chief Justice has been somewhat indisposed; so that we have been a crippled Court. Nevertheless, we have had a great

deal of business to do, and, as you will see by the Reports, tough business. We wanted your firm vote on many occasions.

Your friend Clay has argued before us with a good deal of ability; and if he were not a candidate for higher offices, I should think he might attain great eminence at this Bar. But he prefers the fame of popular talents to the steady fame of the Bar.

Who is to be our next President is a matter of vast uncertainty. All I pray is, that he may be one who is sincerely attached to the Constitution of the United States, and well disposed to exert its proper power for the good of the nation. Beyond this, I speculate little, and indulge few wishes.

The Occupying Claimant Law has at last been definitely settled, after many struggles. I see no reason to take back our opinion, though for one, I felt a solicitude to come to that result, if I could have done it according to my views of great principles. I could not change my opinion, and I have adhered to it. Judge Johnson was the only dissentient Judge in the Court, and you will see what his peculiar opinions were. He was against the laws, and yet willing to give them a partial operation through the medium of a jury, instead of commissioners.

I send you a copy of Brown's Civil and Admiralty Law, in two volumes, which I beg you to accept as a small token of my esteem, and a still smaller return of your numerous favors.

With very sincere regards to Mrs. Todd, whom I remember with great kindness, I beg you to believe me,

Most truly and affectionately,

Your friend and brother,

JOSEPH STORY.

P. S. I know you will say, I wish Brother Story wrote a better hand. But I write in an infinite hurry.

TO NATHANIEL WILLIAMS, ESQ.

Washington, February 28th, 1823.

MY DEAR FRIEND:

. . . The great business at Washington seems to be speculations as to the next President. I am glad you think Maryland will be for Mr. Adams. He will certainly have all New England in his favor, and if Pennsylvania, New York, and New Jersey take the same stand, his chance is very great. It is difficult, however, to ascertain facts on this subject, as every man speaks as he wishes, and is sanguine in the views which he entertains. Mr. Crawford's friends manifestly endeavor, at a distance as well as here, to keep up appearances of great strength; and this perhaps is a fair manœuvre, for it keeps the doubtful in check.

I meddle little with politics, and every day have less heart to do so. In truth, as I acquire experience on matters of Government, I feel more and more the extreme difficulty of acting an independent, and at the same time a useful part. Popular opinion must, in a certain degree, regulate every man's conduct; and yet, if he is wise and honest, he will often find, that it is necessary to put his own popularity at hazard, if he means to subserve the real permanent interests of his country. No patriot or statesman ought to hesitate a moment on this subject, but few have firmness and discretion enough to yield trifling objections, and stand upon great principles.

I have been called away. Judge Livingston is more ill, I fear very ill.

Good night, and may God bless you.

Your affectionate friend,

JOSEPH STORY.

Mr. Justice Livingston did not survive this illness, and his death occasioned the first breach in the Judicial



circle of the Supreme Court, from the time that my father became a Judge, — and deprived him of a loved and valued friend. Hon. Smith Thompson was appointed to his place.

It was at this time that the Constitution of New York underwent revision, and the clause relating to the Judiciary was changed, so as to disable any person of more than sixty years of age from holding a judicial office. Of this change, which operated to remove Chancellor Kent from his position, while he was in the zenith of his powers, my father thus speaks, —

TO HON. EZRAEL BACON.

Salem, September 21st, 1823.

MY DEAR SIR:

I received yesterday, by Judge Platt, your letter of the seventh instant, and to show you how thankful I am to you for it, I hasten immediately to reply. I am glad to have had an opportunity to be introduced to Judge Platt, whom I have long very highly esteemed as an able and independent Judge. He passed an hour or two with me, and interested me a good deal by his conversation. In common with you, and I may add with the mass of the profession, I regret the recent changes in the Judicial department, introduced into the new Constitution of New York. With me it was a sufficient reason to stand by the old system, that its actual administration was such as the warmest friends of the Judiciary desired. Experience had ascertained its excellence, and I am grown old enough to be willing to follow its steady light in preference to any theoretical schemes, however plausible. I do not believe we can ever hope to see the law administered with more learning, dignity, and ability, than it has been by the late Judges of New York. They were entitled to, and received the universal homage of the whole

Union. The removal of such men cannot fail to cast a gloom over all who wish merit to receive its just reward for eminent services.

Indeed the political state of things in New York, is to me a strange riddle, which I cannot fathom or comprehend. You seem broken up into parties so various, and so little defined by any great leading doctrines, that I attempt in vain even to master your vocabulary of names. I regret all this most sincerely. By her position, by her population, talents, and wealth, New York seems destined to be the great leading State of the Union; and considering her at once a commercial, manufacturing, and agricultural State, I have thought her influence would be most salutary in combining other jarring interests. But hitherto I have been disappointed. Her own feuds have divided, and thus subdued her influence.

In respect to the next Presidential election, I am not able to form any satisfactory opinion. You know full well, that I have not for years meddled with local, and rarely at all even with national politics. But on a question like the present I do not even profess indifference, though I take no part. Mr. Adams will probably carry all New England, and if he can win New York, his chance for the Presidency seems to me almost certain in success. I gather that New Jersey, Pennsylvania, and Maryland, will in the end be nearly united in his favor. But still much depends upon fortunate throws in the game. On the whole, taking every thing into consideration, I wish he may succeed. He is probably the best man that can be elected, and he has strong claims for this public distinction. You must not from this imagine that I am insensible to the merits of the other candidates. I have a great admiration for Mr. Calhoun, and think few men in our country have more enlarged and liberal views of the true policy of the National Government. But his age, or rather his youth at the present moment, is a formidable obstacle to his elevation to the chair. Sound policy would in general



dictate that no man should be President under fifty years of age. Mr. Clay has many fine points of character; and Mr. Crawford is likely to lose ground from his supposed connection with the radicals, quite as much as from any other cause.

I am quite astonished to learn from you that all the Departments have interfered in your State affairs. I remember that you affirmed something of the same kind to me in one of your former letters. I have been very slow to believe that "such things were," because I cannot disguise that I think them utterly indefensible. A fact of this sort would weaken my confidence in any statesman. . . .

For myself, I am grateful to you for many kindnesses. I know not indeed to whom in particular I owe my present office, but I have ever supposed that I owed it to your disinterested friendship, though your modesty restrained you from saying so to me.

I intend visiting the western part of New York, the first leisure I can command. Probably, the next summer, or the summer after. My official duties press on me with a heavy hand; but I intend stealing some time to make this interesting tour. It will delight me to visit you and Mrs. Bacon, and if Mrs. Story can accompany me, she will equally rejoice. She desires to be affectionately remembered to Mrs. Bacon.

I have only time to add, having written to you with a hasty pen, that I am,

With sincere respect and esteem,

Your obliged friend,

JOSEPH STORY.

TO HON. JAMES KENT.

Salem, June 22d, 1823.

DEAR SIR:

I take the liberty of sending you a copy of an opinion delivered by me in a recent case of Insurance, not from any



great novelty in the discussion, but from a desire to show you the sincere respect I entertain for your judicial character. On your retirement to private life, with the regrets, I trust, of all good men, I may perhaps be permitted to indulge in remarks, which considerations of delicacy might on any other occasion induce me to suppress. But I cannot disguise the unfeigned sorrow that I feel on your quitting the scenes of your professional glory, and my grateful acknowledgments for the eminent services which you have performed for your country, for the Law, for posterity. Looking back as you may to a quarter of a century employed in judicial labors, it ought to be no small consolation to you, that you have sustained a pure and constantly increasing reputation, and that you have adorned the path of the law with a copiousness of learning, and a profoundness of inquiry, and a solidity of judgment, which few men can hope to attain, and all must reverence. I personally owe much to your instruction, much to your example, and much to your indulgence.

I scarcely need add how much I shall feel gratified by being numbered among your friends, and how fervently I shall pray for the continuance of a life devoted so earnestly and so virtuously to the best interests of our common country. And I beg you to believe me, with the highest respect,

Your most obliged and obedient servant,

JOSEPH STORY.

TO WILLIAM JOHNSON, ESQ.

Salem, May 16th, 1824.

MY DEAR SIR:

I have not yet seen Mr. Cowen's Reports; and am not at all surprised, that there should be in so large a State as New York, an anxious desire to have an elevated system of jurisprudence. It appears to me, that a Court of dernier resort, composed of but three Judges, is too small, both for business and influence, in so large a population, engaged in such a variety of employments. Of the present

Court I know nothing; but of their predecessors I know much; and I have no expectation of ever seeing, in my day, Judges of more learning, talents, and fidelity in any part of the Union. If I do not much deceive myself, your thirty volumes of Reports will form an era, not merely in the jurisprudence of New York, but of America. I unite entirely with you in relation to the conduct of the Legislature in removing Mr. Clinton from the office of Canal Commissioner. To our sober judgments at a distance it is as little commendable on the score of public spirit and magnanimity as it is of sound policy. I am glad to find there is a redeeming and returning sense of justice among your people.

Pray give my best respects, — nay, that is too cold a word, — my most warm and earnest reverence to Chancellor Kent. I hope he will long live to enjoy the delight of witnessing the ascending and widening influence of his fame and labors. I shall have occasion, if I live, to draw on them for many of the best doctrines, and I trust I shall never forget so excellent a master.

I am, dear sir, most truly,

Your obliged and constant friend,

JOSEPH STORY.

The oration, alluded to in the next letter, was delivered by Mr. Everett at Cambridge before the Society of the Phi Beta Kappa of Harvard University, on August 26th, 1824.

TO MR. PROFESSOR EVERETT.

Salem, September 15th, 1824.

MY DEAR SIR:

I am greatly obliged to you for the copy of your oration which you recently sent me. I have read it with increased interest. I agree, that something of the fascination of the



delivery is lost, but it appears to me more than compensated by the extraordinary pleasure of dwelling again and again upon those passages, which awaken the mind to its most profound thoughts, and delight it by their uncommon felicity of expression. *Decies repetita, placebit.* . . .

I had not seen Mr. Jefferson's letter, my own newspaper having been mislaid or miscarried, until after you referred me to it. His reasoning is plausible, but upon looking into the original authorities, I think his construction of the words untenable.

It appears to me inconceivable how any man can doubt, that Christianity is part of the Common Law of England, in the true sense of this expression, which I take to be no more than that Christianity is recognized as true, and as the established religion of England. Upon what other foundation stands her whole ecclesiastical system? Yet that system is as old as any part of the Common Law which we can clearly trace. Can you believe, that when heresy was punishable with death, and Statute Laws were made to enforce Christian rites and doctrines, it was no part of the Law of England, that to revile the established religion was a crime? Prisot did not make, or declare the law, in the case referred to; he spoke to a fact. In his age, England was overrun with all sorts of ecclesiastical establishments, nunneries, and monasteries, and Christianity constituted a great part of the public concern of all men. To suppose it had not the entire sanction of the State, is, with reverence be it spoken, to contradict all history.

I am very truly and affectionately, yours,

JOSEPH STORY.

The letter of Mr. Jefferson, which forms the text of the latter portion of this letter, will be found in the fourth volume of his printed correspondence. It was addressed to Major Cartwright, and contains an elabo-



rate argument to prove that Christianity is not a portion of the Common Law.

This letter of Mr. Jefferson is also commented on in the Inaugural Discourse delivered by my father, on taking the chair of Dane Professor at Harvard University, and was the occasion of the following article, written by my father in his Common-place Book in 1811, and afterwards published in the ninth volume of the American Jurist, in 1833.

CHRISTIANITY A PART OF THE COMMON LAW.

Mr. Jefferson, in a letter to Major Cartwright, recently published, insists that the maxim, that Christianity is a part of the common law, has no foundation in the cases cited to support it, they all referring to the Year Book, 34 Henry VI. 38, 40; which he says has no such meaning.

The substance of the case in 34 Henry, VI. 38, 40, is this. It was a *quare impedit* against the bishop and others; and the bishop pleaded, that the church was in litigation between the plaintiff and his co-defendant, as to the right of patronage. The argument by counsel in one part of the case was, that every advowson and right of patronage depended upon both laws, namely, the *law of the church* and the *common law*; for every presentment commenced at the common law and took effect by the law of the church, as to the ability or non-ability of the clerk presented or his being criminal. And it was said by Ashton, that if the bishop should refuse the clerk on account of alleged inability, and a *quare impedit* was brought, and the bishop excused himself on that account, and the parties were at issue upon the fact of ability, another judge should decide that, namely, the metropolitan. But that was denied by Danby, who said it should be tried by the jury. Ashton, however, persisted in his opinion, arguing that the right of advowson must be tried by both laws, and

that before judgment was given, knowledge ought to be had of the ecclesiastical law. Prisot then said: "A tiels leys, que eux de sainte Eglise ont *en auncien Scripture* convenit pur nous a doner credence, quia ceo est comen ley, sur quel toutes maners leys sont fondues; et, auxi, sir, nous sumus obliges de conustre leur ley de saint Eglise; et semble, ils sount obliges de conustre notre ley." The literal translation is, "As to those laws, which those of holy church have in ancient scripture, it behooves us to give them credence, for this is common law, upon which all manner of laws are founded; and thus, sir, we are obliged to take notice of their law of holy church; and it seems they are obliged to take notice of our law."

Mr. Jefferson supposes that the words "auncien scripture" do not refer to the Holy Scriptures or Bible, but to ancient writings, or the written code of the church.

But if this be so, how could Prisot have said that they were common law, *upon which all manner of laws are founded*? Do not these words suppose that he was speaking of some superior law, having a foundation in nature or the Divine appointment, and not merely a positive ancient code of the church?

Mr. Jefferson asserts, that in subsequent cases, which he refers to, the expression has been constantly understood as referring to the Holy Scriptures; but he thinks it a mistake of Prisot's meaning. Now it is some argument in favor of the common interpretation, that it has always been cited as clear — Mr. J.'s interpretation is novel.

This case is cited in Brook's Abridg. Title *Quare Impedit*, pl. 12, and in Fitzherbert's Abridg. s. t. 89; but no notice is taken of Prisot's saying.

Mr. Jefferson quotes sundry cases, where this saying has been relied on in proof of the maxim, that Christianity is a part of the common law.

Thus, in Taylor's case, 1 Vent. 293, indictment for blasphemous words, Hale, C. J., said, Such blasphemous words are

not only an offence against God and religion, but a crime against the laws and government, and therefore punishable in this court, &c.; and Christianity is a part of the laws of England; and therefore to reproach the Christian religion is to speak in subversion of the law. In the same case in 3 Keble, 607, Hale, C. J. is reported to have said, "Religion is a part of the law itself, therefore, injuries to God are as punishable as to the King, or any common power." The case of 34 Hen. VI. 38, 40, is not here cited by the Court as a foundation of their opinion. But it proceeds upon a general principle.

So in *Rex v. Woolston*, 2 Strange, R. 834, S. C. Fitzgibb. 64, the Court said they could not suffer it to be debated whether to write against Christianity in general was not an offence punishable in the temporal courts, at common law, it having been settled so to be in Taylor's case, 1 Vent. R. 293, and *Rex v. Hall*, 1 Strange, R. 416. No reference was here made to the case in 34 Hen. VI.

A reference is made by Mr. J. to Sheppard's Abridgment, title *Religion*; but the only position there found is, "that to such laws as have warrant in Holy Scripture our law giveth credence;" and "laws made against the known law of God are void;" and for these positions, he cites, among others, the case of 34 Hen. VI. 40.

But independently of any weight in any of these authorities, can any man seriously doubt, that Christianity is recognized as true, as a revelation, by the law of England, that is, by the common law? What becomes of her whole ecclesiastical establishment, and the legal rights growing out of it on any other supposition? What of her test acts, and acts perpetually referring to it as a divine system, obligatory upon all? Is not the reviling of any establishment, created and supported by the public law, held a libel by the common law?

The preceding article is one of several of a similar



character, which were extracted from my father's Common-place Book, and published in the *American Jurist* during the years 1832 and 1833. They were written in 1810 and 1811, before he had received his appointment to the Bench, and with no view to publication, and are peculiarly interesting as showing the nature and extent of his private studies in the law, and his determination to pursue it as a science, to investigate its principles, and to clear up in his own mind its doubtful points. These papers are all careful, accurate, and able, and show great research in the Year Books, and all the earlier authorities. The following is a list of them : —

In volume VII. of the *American Jurist*, 1832, are two articles, — one entitled "Damages on Replevin," (pp. 46-52); the other, "Countermand or Revocation," (pp. 52-55.) The latter discusses the question, whether money delivered by a creditor is countermandable in the hands of the bailee before delivery to the creditor. Both of these articles were written in 1810.

In volume IX. 1833, are three articles, — one entitled "Case respecting Bail," (pp. 66-70,) which was written in 1810; and another, entitled "Insurance; Partial Loss on the Memorandum," (pp. 344-346,) written in 1811; and another, entitled "Christianity a part of the Common Law," written in 1824.

In volume X. 1833, is an article entitled "Remedy on Covenants in the Realty," (pp. 117-118,) which was written in 1820.

The opinion entertained by Sir James Mackintosh, of the value of my father's judgment, appears in the following extract from a note to Mr. Everett, introducing some English friends, and dated June 3d, 1824.

"I wish that Mr. S — and his friends could be made known to Mr. Justice Story, whom I have not the honor to know, but whose judgments are so justly admired by all cultivators of the Law of Nations."

During the session of the Supreme Court in 1824, my father's attention was drawn to certain propositions for a Reform of the Judiciary, then before Congress, one of which was to separate the Supreme Court of the United States from the Circuit Courts, by the appointment of distinct Judges to preside over each Court; and another was to enlarge the Bench of the Supreme Court, by the creation of two additional Judges. The following letters state his views on these questions.

TO HON. DANIEL WEBSTER.

Salem, January 4th, 1824.

MY DEAR SIR:

I have been chin deep in business, or I should have written to you long before this time. I have had to write opinion after opinion, and the thorough examination of the Springetbury Manor Case cost me more than a week of intense labor.

What you say in respect to the projects as to the judiciary does not surprise me. It has been long obvious, that an addition to the system must be made. If the creation of Western Circuits with Circuit Judges would satisfy the gentlemen in that quarter, it would be as well as any scheme I know of. The most complete and efficient system of Circuit Courts would be on the plan of the system of 1801, and if Congress is to create a general system, that, in substance will furnish the best model.

You know very well my own notion as to the Judges of the Supreme Court performing circuit duties. I am quite sure it is a great advantage to them in quickening their diligence

and their learning; but it is scarcely possible that they can do the duties long, as business increases upon them. Five Judges, ordinarily, would do the business of an Appellate Court better than a larger number. But in respect to the Supreme Court of the United States, it would be too small a number. We must have Judges numerous enough to bring to the Court an extensive knowledge of local jurisprudence; and when you consider the vast extent of our territory, and the vast variety of local laws, it is indispensable that there should be at least seven judges. Besides, in such a Court, which decides great constitutional questions, numbers carry weight. *Numerantur et ponderantur*. Of the two, if the question were, whether the Court were to be five, or nine, I should say *nine*; and then, with a proper distribution, we should not have more than a fair representation of local law. In short, I see no objection to nine Judges of the Supreme Court; and looking to the future preponderance of the numerical influence of the West, there is great reason for the commercial States to wish a large number of Judges, that they may be fairly represented in the Court. In every view, I am decidedly of opinion that, in future, the West ought to have two Judges out of the seven on the Bench.

My principal reason for wishing a Circuit Court system established, is the desire that our excellent friend, Mr. Mason, should be promoted to the Chief Justiceship in our Circuit. His splendid talents deserve to be better known, and I wish him to acquire a lasting judicial fame, and to become incorporated with the brightest luminaries of the age. He is equal to any of them, and would give a permanent glory to New England.

For other reasons, I should rather incline against the system, because I am sure that I am a better Judge for my circuit labors. But on this as on all other points of public concern, I shall submit without murmur to the decision of Congress. What I mostly hope is, that if the Supreme Court is taken from the Circuits, the terms, if two, will be so arranged, that



we may meet on the first of November and the first of May. In this way, we may clear away the local cases, before Congress is seriously engaged in its most important business, — that is, by New Year's day. But I believe the May term will always be little more than a form; and I am by no means sure, that a single long term might not be preferable; when Congress is not in session, little business will be ready to be done.

You are aware that the criminal code of the United States is shockingly defective. I see that the subject is before you. I have a copy of Mr. Daggett's bill in 1818, which was pretty accurate, (as I have some reminiscences,<sup>1</sup>) and if you cannot find a copy of it, I will send you mine. I should prefer a code in the form of articles, and will assist in drawing it, if necessary. You have a man with you, who is *au fait* at that.

I rejoice to hear Mrs. Webster is well, and intend shortly to have a snug corner in your parlor, and a taste of your good things.

I wish you and her a happy new year, with all that love and honor, health and virtue can bring with them. . . .

The law is flourishing pretty well. I pronounced a "*capital*" opinion, as you would say, in your case of *Chamberlain v. Chandler*, about the *Missionary Passengers*. I just awarded damages against Chandler of \$400. . . .

What hope of a Bankrupt Act? Why, will you not ask me to put one into the shape of a code in articles? I want to try my hand at codifying a Bankrupt ordinance.

I have fairly written down Sunday evening, and bid you good night. God bless you and preserve you all, is the wish of

Your affectionate friend,

JOSEPH STORY.

<sup>1</sup> It was written by my father.

TO HON. DANIEL WEBSTER.

Salem, January 10th, 1824.

MY DEAR SIR :

Your letter of the 4th reached me just as I was getting into the coach for Boston, and I read it on the road, and read it afterwards to Mr. Prescott. I suppose about the same time you received a letter from me, and I have amused myself with the coincidence of opinion that there is between us, on the subject of the judiciary. The more I reflect, with regard to the dignity of the Court duty, and the permanent interest of the nation, the more I am satisfied that the best change will be by adding two Judges to the Supreme Court. If we should be so fortunate as to have the gentlemen you name, in Judge W. and Judge B., I shall congratulate myself upon the favorable auspices under which we live. I admit, that there are difficulties attending so large a number, but these shrink to nothing, when compared with other more formidable evils, resulting from diminishing the number to five, or taking the Judges from the salutary and stirring influence of the Circuit business. We are now, as to local law, quite short handed, and want aid. Looking to the future, the want must perpetually press more and more heavily upon us; and I see much good in adding weight of character, and of local knowledge to a tribunal, whose decisions must always be interesting, and who will always have sharp collisions to meet and grapple with. I do not at all wonder at the impatience of the West. If I lived there, I should feel great reluctance in submitting to the present system, and should earnestly contend for equality of rights.

Besides, if a Circuit system were at this moment put in operation, is it quite certain that we should be gratified? I could name a Court that would make us all stare, and yet, which could be pressed upon us with all the power that influence and State pride, &c., (all being like Littleton's *et*



*ceteras*, full of learned meaning,) could bring to bear upon the Government.

Mr. Prescott and myself talked the matter over, and came to the same result. As a choice of schemes, we thought it best to give two additional Judges to the Supreme Court.

You will see another attack in our Legislature upon the independence of the State Supreme Court. The proposition is to repeal the act of 1809, giving them additional salaries, so as to reduce the compensation to \$2,500 for the Chief Justice, and \$2,400 for the other Judges. I hear that this proposition, which comes from the country, is very popular, and is very likely to succeed. If it does, it is a virtual exclusion hereafter of eminent men from the State bench, and at all events, of able commercial Judges. The curse is fast approaching, which, in the late Convention, was so strongly foretold. The influence of the seaboard is going, and will soon be gone. I am told, that the intention is to substitute this proposition for the present, for a diminution of the Judges to three; but when this is accomplished, the other will soon follow. *Sic ilur, sed non ad astra.*

I do not yet find my way through the woods. As to all my law business, I work daily very hard; but the load is heavy. I wish a little Greek fire could burn out a path for me, and leave no stumps behind.

In all due haste, I am, as ever,

Most affectionately, yours,

JOSEPH STORY.

The bill in relation to the Criminal Code, which my father in the former of these letters proposes to prepare for Mr. Webster, on the basis of the previous bill of 1818, was, in pursuance of his proposition, drawn up by my father, and with some modifications, passed at the next session of Congress in 1825. It was the famous Crimes



Act, which is generally attributed to Mr. Webster, and which in twenty-six sections has contributed so greatly to the improvement of the Criminal Code of this country. The repeated efforts of my father to bring this subject before Congress have been already seen. Since the passage of the previous Act of 1790, no legislation upon it had taken place in Congress. That act is entitled to high praise for its large and valuable provisions in the then infant state of the National Institutions. But the country had entirely outgrown it. The defects in the system were so numerous, that half of the most notorious crimes, which the General Government was alone competent to redress, were beyond the reach of judicial punishment. For instance, rape, burglary, arson, and other malicious burnings in our forts, arsenals, navy-yards, and light-houses, were wholly unprovided for; and experience had abundantly proved that a lapse of thirty years had made our Criminal Code for practical purposes almost worthless. The act of 1825 cured most of its defects, and secured great practical benefits to the country. If it failed to create a complete system, it was because of the obstacles attending the passage of a measure, which was not only complicate and extensive, but which aroused party feelings and party strifes. To Mr. Webster is due the credit of carrying it through Congress; to my father, that of creating it.

Sir Samuel Romilly and Mr. Peel, by their improvement of the Criminal Code in England, have won a deserved reputation. But no single effort of theirs surpasses in magnitude or in merit the Crimes Act of 1825. And my father is justly entitled by this labor alone, not

to speak of his other valuable gifts to the legislation of his country, to take rank with them, among those who have reformed and systematized the Law.

The case of *Chamberlain v. Chandler*, (3 Mason's R. 242,) which is also spoken of in the preceding letter, was a process in the Admiralty brought by a husband, wife, and children, who were passengers on board the ship *Pearl*, on a voyage from Woakoo to Boston, against the master of the ship, for ill-treatment and insult to them during the voyage. The judgment lays down the duties of the master of a vessel towards his passengers, under the general Maritime Law, and is interesting for its liberal doctrines, its moral sentiment, and for its recognition of the legal rights of women to claim from the master of a vessel in which they are passengers, "not merely ship room and personal existence," but "respectful treatment, and modesty and delicacy of demeanor."

It has been seen, that my father was a Unitarian in his religious belief. The following letter shows what he understood to be the doctrines of Unitarianism.

TO WILLIAM WILLIAMS, ESQ.

Washington, March 6th, 1824.

DEAR SIR:

I acknowledge with pleasure your letter of the second of February, which reached me a very few days since. What you say of the false statements in the prints respecting Unitarians does not surprise me; for I well know that bigotry, and misapprehension, and ignorance are very like to lead men to the most extravagant opinions. The Unitarians are universally steadfast, sincere, and earnest Christians.

They all believe in the divine mission of Christ, the credibility and authenticity of the Bible, the miracles wrought by our Saviour and his apostles, and the efficacy of his precepts to lead men to salvation. They consider the Scriptures the true rule of faith, and the sure foundation of immortality. In short, their belief is as complete of the divine authority of the Scriptures, as that of any other class of Christians.

It is a most gross calumny, therefore, to accuse them of treating the Bible and its doctrines as delusions and falsehoods, or of an union with Deists. In sincere unaffected piety, they yield to no persons. They differ among themselves as to the nature of our Saviour, but they all agree that he was the special messenger of God, and that what he taught is of Divine authority. In truth, they principally differ from other Christians in disbelieving the Trinity, for they think Christ was not God, but in the Scripture language "the Son of God."

I think it not impossible that Deists may look upon them with more favor than upon other Christians, because they have confidence in human reason as a guide to the interpretation of the Scriptures, and they profess what the Deists consider more rational and consistent opinions than the Calvinists. But beyond this, I believe, that the Deists have no kindness for them, and as to connection with them, it is an utter absurdity. You do the Unitarians, therefore, no more than the justice which I should expect from your liberality, in disbelieving such tales. But I will not trouble you any more with this controversial subject. I should exceedingly rejoice to see you again in New England, where you would see them as they are, and you would find, that, although changes of opinion may have occurred, a strong religious feeling and a spirit of improvement universally prevail.

May you long, my dear sir, enjoy the happiness that results from a pure life and elevated pursuit. This is the wish of your most obliged friend,

JOSEPH STORY.



The following lines written about this time, have a graceful simplicity of style and feeling.

LINES FOR A LADY'S ALBUM.

Lines for an Album ! how shall one,  
Whose years their mid career have run,  
Presume to touch the lyre ?  
Far other thoughts and toils combin'd  
Have worn their channels in his mind,  
Than tuneful themes inspire.

Yet time there was, and blest the time,  
He sought to build heroic rhyme,  
And sport in Fancy's rays.  
Humble his skill, but deep and strong  
The love he bore to classic song,  
His study and his praise.

But youthful hopes and pleasures pass,  
Like shadows o'er the waving grass  
Of clouds borne swift by wind ;  
Yet deem not thence, my lovely friend,  
Like these they perish, soon to end,  
And leave no track behind.

Though melt the enchanted dreams of youth,  
Touch'd by the sober wand of truth,  
All is not false or vain ;  
The conscious joy of innocence,  
The feeling heart, the instructed sense,  
The charms of taste remain.

Sweet is the memory of the past,  
Though here and there a shadow cast  
May dim the distant scene ;  
E'en sorrows, when by time subdued,  
Softens the soul to gentler mood ;  
Light cheers the space between.

And friendship is not aye a name,  
Nor love a bright but treacherous flame,

Alluring to destroy.  
Hearts that in early life are blest  
With union sweet, how pure their rest!  
How holy is their joy!

Eliza, may thy days be spent  
In blissful ease, in calm content,  
Grac'd with domestic ties;  
And if some griefs should intervene,  
Brief be their course, and only seen  
As blessings in disguise.

In the year 1825, he wrote for the North American Review an article upon Mr. Phillips's Treatise on Insurance, which contains a historical and critical sketch of the Commercial Law of England, from 1662, when Malynes's *Lex Mercatoria* was first published, interwoven with sketches of Lord Mansfield, Lord Kenyon, Lord Ellenborough, Lord Stowell, and Sir James Mackintosh,—an account of the present condition of Commercial Law in America,—and a Catalogue Raisonné of the principal writers on Insurance. This article will be found among his Miscellaneous Writings.

In 1818, my father had been elected a member of the Board of Overseers of Harvard University. In January, 1825, a memorial was presented by the professors and tutors, claiming as a right, that none but resident instructors were eligible as "Fellows" of the Corporation. In this question my father took considerable interest, and during the discussion which arose in the Board of Overseers, he made an elaborate legal argument against the claim set up by the memorialists. The argument was confined wholly to the legal merits of the case; and in commencing his remarks he expressly disclaimed any intention to inquire into the expediency of selecting the

Fellows of the Corporation from the resident instructors; no case being then before the Board which merited or required such a discussion. This argument is full of curious and recondite learning on a question which had not been agitated here for more than a century, and in respect to which general ignorance prevailed. It contains not only a thorough investigation into the law of the case, but into the statutes and usages of the English Colleges on the subject. The precise questions raised by the Memorial, and argued by my father, will appear distinctly from the following brief extract from the argument.

“ The object of the Memorial is to show, that the Corporation of Harvard College, as at present organized, is not conformable to the charter of 1650. The proposition maintained is, that, by ‘ Fellows,’ in the charter, is meant a particular description of persons, known in English colleges, and, at the time of the charter, existing in Harvard College, and having known rights and duties. The Memorial then asserts, and endeavors to prove, that ‘ Fellow ’ imports a person resident at the College, and actually engaged there in carrying on the duties of instruction or government, and receiving a stipend from its revenues. In the view of the Memorial, each of these facts, — residence, instruction or government, and receiving a stipend — constitutes a necessary part of the definition of a ‘ Fellow.’ And it is contended by the Memorialists, that this is the meaning attached to the word in the charters of the English colleges; that it was so actually applied in Harvard College before 1650; and that, consequently, it is the true and only sense of the term in the charter of 1650. The Memorial seems to maintain, that no persons, but such as have the necessary qualifications at the time of the choice, are eligible as Fellows. But if it



does not go to this extent, it maintains, that, after the choice, the party must be a resident, an instructor or governor, and a stipendiary.

“ My first object will be to ascertain, whether the above definition of ‘Fellow’ be true and correct, as applied to English colleges; for on this definition the whole argument rests. I shall contend, and endeavor to show: 1. That the term, ‘Fellow,’ when used in the charters of English colleges, has no peculiar meaning, distinct from its ordinary meaning of *associate* or *socius*. 2. That the qualifications of Fellows are not the same in all the colleges; but vary according to the requisitions of the charters, and the successive statutes of the particular foundations. 3. That, as an enumeration of the particular qualifications of Fellows in the colleges generally, the above definition is incomplete. 4. That the objects of these Fellowships are very various; and generally, if not universally, of a nature wholly distinct from any which the Memorial itself supposes to be the principal object of the charter.”

The argument had the effect of overthrowing the whole position taken in the Memorial, and satisfactorily establishing the legality of electing as Fellows persons not resident at Cambridge, and not engaged in its instruction or government. During the same year my father was elected a “Fellow” of the Corporation.

The following letters to Professor Everett, who was one of the Memorialists, and took a prominent part in the debate, relate to this matter, and will serve to show the tenderness and delicacy with which my father undertook to oppose his views.

TO MR. PROFESSOR EVERETT.

Salem, January 4th, 1825.

MY DEAR SIR:

I have received your letter of the twenty-sixth, and your accompanying pamphlet. I have been bestowing considerable attention on the subject of the Professors' Memorial, and to Mr. L.'s and your discussion of the general subject. My impression in a legal view, for to that I confine myself, is against the right set up by the Memorial. At the same time, I am ready to do justice to the very able manner in which you have discussed the subject, both in the Memorial and your auxiliary pamphlet. The argument is brought out with great force and perspicuity, and I dare say has staggered a great many who had no previous doubts. I am not sure that I shall be able to satisfy them that you are not right. But in the Board of Overseers I feel myself called upon to express an opinion, if the subject is there discussed, as I presume it will be. In that event, I shall speak only to the law of the case, and shall treat all you have said with the deference which belongs to it, as the argument of one who need not shrink from any professional controversy. No one would be more ashamed than myself, not to express my public respect for your reasoning on this occasion. And I hope you will believe me incapable of any thing but what a sincere friend may justly say in a case where he differs from you, but in entire kindness.

I hear a great deal of your Pilgrim Oration; and I am authorized to say, that great as were the public expectations, you surpassed them. One hour and fifty-five minutes is a long time to hold an audience suspended in delighted silence. That triumph belongs to you in common with very few. I hope I am to read you in print, as I did not hear you.

I thank you for what you say of my Review. I could

have made it better if I could have made it somewhat more professional; but then it would have been dull and heavy to all readers but lawyers. I do not believe quite so much in the infallibility of the Common Law as my brethren; and notwithstanding all that is said to the contrary, I am a decided friend to codification, so as to fix in a text the law as it is, and ought to be, as far as it has gone, and leave new cases to furnish new doctrines as they arise, and reduce these again, at distant intervals, into the text.

I am very truly and affectionately, yours,

JOSEPH STORY.

TO MR. PROFESSOR EVERETT.

Salem, January 8th, 1825.

MY DEAR SIR:

I shall be very glad to see you on Tuesday, and talk over the matter of Harvard College. We will dine alone at two o'clock, if it be agreeable to you, in a family way. I hope you are impressed with the consideration that in what I shall say, I have not the least desire to affect to triumph over your argument, even if I could accomplish it. Far from it. I shall present my views of the question as a lawyer, and with the constant recollection, that doctors may, and lawyers do often disagree. I have thought it due to my station in the Board of Overseers, and to myself as a public man, not to be silent in a case which called for professional investigations.

I have not seen any English newspapers for the last two months. Will you do me the favor to ask Mr. Hale to send me some of his, which I will return before I go to Washington.

Yours, very truly and affectionately,

JOSEPH STORY.



## CHAPTER XIII.

### JOURNEY TO NIAGARA.

LETTERS DESCRIPTIVE OF A JOURNEY TO CATSKILL, TRENTON  
FALLS, AND NIAGARA.

DURING the months of June and July, in the year 1825, my father and mother, with Mr. and Mrs. Webster and Miss Buckminster, (afterwards Mrs. Thomas Lee,) made a tour through a part of the State of New York, and visited Catskill, Trenton Falls, and Niagara. The following letters, giving a narrative of the journey, were written by my father on the road, and are not only interesting for their descriptions of remarkable places and natural scenery; but also as showing the condition of the country, and the modes and means of travel, before the introduction of steam and the building of railroads had produced such extraordinary changes.

TO WILLIAM FETTYPLACE, ESQ.

Catskill Mountains, June 29th, 1825.

DEAR BROTHER:

I am at this moment writing you from a height three thousand feet above the level of the river Hudson, and exhibiting a prospect the most striking, extensive, and magnificent I ever beheld. A vast amphitheatre, fifty miles in breadth and one hundred miles in length, spreads around us, and embraces the windings of the Hudson for a great many miles. All the surrounding country seems reduced to a dead level, and looks as if it were spread like a garden or a cultivated field, just

below our feet. But I must stop from saying more of this wonderful scene, as my object is only to give you a short account of our journey thus far, and I have but a few moments to write. Indeed, it is now near bedtime, and many sheets might be filled with the thoughts that the scene about me inspires.

Our party, consisting of Mr. and Mrs. Webster, Miss Buckminster, Mrs. Story and myself, left Boston on Friday last, at nine o'clock in the morning. The day was delightful, and we enjoyed it in a high degree. We dined at Framingham, and arrived at an early hour at Worcester, where we passed the night. In the evening, Mr. Webster and myself called on Governor Lincoln. In the morning, we left the town, having first eaten an early breakfast, passed through Leicester and Brookfield, and dined at a village in Ware, which is very pleasantly situated in the midst of a flourishing manufacturing establishment, in the bosom of a valley. The day was lowering, and we had at intervals short showers; but from this time till evening, we had constant rain, at times pouring down in torrents. We passed through Belchertown, and saw the Connecticut River at Hadley, crossed it in a ferry boat, and reached Northampton, which is on the west side of the river, a little after sunset. Here we remained all Sunday. Mr. Gannett, of Boston, preached in the new Unitarian Society, and we went to attend the service both morning and afternoon. After this was over, Mr. Webster and myself went over the river and ascended Mount Holyoke, which is about one thousand feet high; and round its feet the Connecticut flows in silent beauty. The prospect from this height is delightful; for quiet loveliness and cultivated, picturesque scenery, it is probably nowhere exceeded. To the north you see the Green Mountains of Vermont, and below you, the villages of Hadley, Hatfield, and Amherst, where the new college is. At the South, are the villages of Granby and South Hadley, and in the farther distance, Springfield just peeps above the horizon. Northampton forms a part of the



view, though its beautiful outline is not here seen to so great advantage as from some other elevations in its neighborhood. On our return we visited Round Hill, on which the school of Messrs. Cogswell and Bancroft is situated. There are three principal buildings, and about sixty boys now educated there. It is very beautiful in itself, and gives a most interesting picture of Northampton. It was just sunset when we stood in the portico of the principal building, and the whole scene was lighted up with splendid coloring.

On Monday morning we left Northampton after breakfast, passed through Peru and Pittsfield, (the latter is very pleasantly situated,) and arrived at New Lebanon Springs in the evening. On our right, the Saddle Back Mountain, the most southern extremity of the Green Mountains, was in sight during almost the whole day.

Lebanon Spring is in a deep valley surrounded by mountains, some of which are finely cultivated. The next morning, although it rained almost continually, we paid a visit to the remarkable Shaker village, which is two or three miles from the Spring. Nothing can exceed the neatness, order, and thrifty appearance of the whole establishment. By the kindness of Elder Green, to whom we were introduced by Judge Skinner, of Albany, we had an opportunity of visiting every part of the buildings, including the church. In the latter, there are elevated seats reserved for what they call the world's people, and in visiting the dairy, the kitchen, and the ordinary rooms, we saw such clean and nice floors as no lady in any city can boast. After dinner we left the Spring for Albany, and arrived there about eight o'clock in the evening.

I have had little opportunity of visiting this city; but I made a hasty turn around it, and from the top of the capitol surveyed it at large. It appears to have a thriving, business air, and has some good public buildings, but the general impression on my mind was not very agreeable. We quitted it at ten o'clock, in the Chancellor Livingston, for Catskill, which is almost thirty-five miles down



the river, and we were landed about three o'clock. We then took a coach for the Catskill mountains, which are about thirteen miles distant. You travel about seven or eight miles to the bottom of the mountains, and thence there is a fine coach road continually ascending to the top of what is called the Pine Orchard. At this place is a fine hotel, capable of entertaining two hundred persons, and supplied with excellent provisions. There is a continual influx and departure of company. When this hotel first appeared in sight, we were about two thirds up the mountain, and it seemed perched in the air like a bird's cage hanging over a precipice. But adieu, — my pen is bad, and I can scarce read what I write, and am almost asleep. Mrs. Story is quite well, and enjoys herself very much. Direct all your letters to me at Albany for a fortnight, after which I shall probably either go to Quebec, or return to some point near the Springs.

Yours, affectionately,

JOSEPH STORY.

TO WILLIAM FETTYPLACE, ESQ.

Saratoga, July 3d, 1825.

DEAR BROTHER:

We arrived here in good health and safety last evening, and shall probably remain here a day or two. I last week wrote you from the Catskill mountains, and had not then visited the cascade in the neighborhood. It is about two miles distant from the hotel, and there is a good conveyance to it by an open wagon, in which you are pleasantly jolted to a spot not far distant from the cascade. On our arrival, we found a small, rude house of entertainment, erected on the brow of the precipice which overlooks the falls. It is in a wild, romantic scene, embosomed in the woods. There is a platform surrounded with an open fence, so that you may look down the dizzy declivity with perfect safety. I confess that as I looked down, I experienced a feeling of disappoint-

ment. It struck me as nothing more than a deep and shady glen with a rocky bottom, over which a small and noisy stream hurried along with some precipitation. The distance below did not strike me as great, but on inquiring, I found that at the lowest depth it was actually three hundred feet below the place where I stood, although, (such was the optical delusion,) it seemed hardly fifty feet. There are in fact two cascades, forming, as it were, two steps in the descent; the first is about one hundred and seventy-five feet, and a part of the sheet of water falls the whole of that distance, without a single break; the water then runs nearly on a level through a bed of ragged rocks about fifty feet, and then you come to the second cascade, which is precipitated about eighty feet more, and then descends in irregular streams to the lowest depth. From the position where I stood, I could see both cascades; the upper, being in almost a perpendicular line, was apparently short; the second appeared like a fall of three or four feet only, and I was astonished, not to say incredulous, when I was told it was actually eighty feet.

Such was the view from above. We now descended by a narrow foot-path to the bottom of the first cascade, and here I was overwhelmed with admiration at the grandeur of the scene. What had appeared to me from above to be trivial, broke upon me now with stupendous power. Conceive yourself in the vale below the precipice about two hundred feet. On looking round, you find yourself in a vast amphitheatre nearly in the form of a semicircle, formed of solid rock, whose excavations are so regular that they seem less the effect of nature than of art. The sides are so deeply hollowed out, that the rock above projects perhaps fifty or one hundred feet over, and forms a sort of canopy surmounted by lofty trees standing on the very edge of the rocks, and threatening every moment to plunge into the deeps below. The rocks are of a slaty texture, continually decaying and making a coarse gravel, on which you may walk round the whole semicircle passing behind the waterfall. On looking



up you perceive the projecting precipice, over which the narrow stream leaps with a rapid current, and forms a white sheet, like an infinite series of flakes of cotton wool, broken up into a snowy foam. There is a mill-dam above, where the water is detained; and when travellers come to view the scene, this is frequently opened to increase the stream. We saw it with this additional power, and it came down with a thundering noise, the whole front being unbroken by a single interruption. The back of the current just touched lightly on some of the shelving rocks of the canopy. We walked all around the stream in front and rear, and saw this interesting view from every position, being sometimes wrapped in a drizzling mist that was thrown about by the descending stream. Here our labor was intended to be terminated; but we at length concluded to go down the banks to the bottom of the second precipice, and thus obtain an upward view of the whole of this magnificent scenery. The banks here were very precipitous and difficult, but our ladies accompanied us. In a short time we found ourselves at the desired point. The scene was here still more vast and grand than from my other position. There was a second amphitheatre formed of shelving rocks exactly as that above. The fall of water was found to be eighty feet (as we had been told) and now struck us with new wonder. From one point we could see both cascades, so that they seemed to unite as one continuous stream. From another point we saw them separate and pouring down with distinct sheets. And again by turning round we could look below, where the chafed current swept along the ravine with a sullen, sparkling stream, occasionally lost in the shade of the trees, and again reappearing in the crossing lights that penetrated on every side. Looking directly up to the heavens, we saw the sun enveloped in a mist, surrounded with a perfect halo.

We had directed refreshments to be sent below to us, and soon a basket with wine and crackers, and other provisions, was suspended from the platform of the precipice, and gradu-



ally lowered down the height of the first cascade. We soon got it, and sat at the bottom and enjoyed a fine repast. After remaining about half an hour, we re-ascended and returned to the hotel to dine.

I have described this scene somewhat at large, because I think it the most grand and striking of any thing I ever saw, and of itself worth a journey to Catskill. But when united with the glorious view from the surrounding mountains, it must be an object of the greatest curiosity to all who are not dead to nature and her works.

Towards evening we took our carriage, and descending the mountains, came back to the village of Catskill, where we slept during the night; and taking the steamboat (C. J. Marshall) we returned to Albany by nine o'clock the next morning. We here found that General Lafayette was expected in the city on that day, and we received an invitation to dine with him in public. We accepted it, and Mr. Webster and myself sat down to dinner in the capitol, with a company of about one hundred and fifty, at five o'clock. The entertainment was very good, and the company very pleasant. I there saw Judge Spencer, and Governor Van Ness, of Vermont, and many other distinguished gentlemen. General Lafayette appeared in very good health and spirits, a little sunburnt and fatigued. In the evening we went to the theatre with the ladies. General Lafayette was there, and it was very prettily ornamented with flags for the occasion. It is quite a handsome building, and the play, (which was the *Honeymoon*) was performed in a respectable manner. General Lafayette left the theatre about ten o'clock, and went immediately on board a steamboat to descend the river; we returned home and rested from our fatigues.

Yesterday morning at nine o'clock we left Albany in a stage-coach, and went as far as the Cohoes Falls, on the Mohawk, a distance of about nine miles. These Falls are well worth seeing. The river was very low, and the descent is over a ledge of rocks, extending entirely across

its bed, and the fall is about seventy feet. When the river is high, it appears to much greater advantage, as the sheet of water extends across its whole breadth. As it was now, the rocks were almost entirely bare, and their streams here and there rushed in small channels, worn in the rocks down the steeps. At this place we took our passage in the canal boat (Lady Adams) and passed up the Great Western Canal about nine miles, crossing the Mohawk on a fine aqueduct built over the river below us, twenty or thirty feet. After travelling about two hours we stopped for a short time alongside of a small stationary canal boat, which we found was the kitchen where our dinner was cooked. I was amused with the name of the boat, which was called the "Betsey Cook." This was a great convenience to us all, as we avoided the heat and smell of the cooking, and enjoyed a good dinner without any doubtful prognostications. We were accompanied by a few friends from Albany, with whom we parted after dinner, and then took a stage-coach, passed through Ballston and arrived at Saratoga about sunset. The quiet of a canal boat, as well as the interesting scenery perpetually disclosing itself on the route, gave me very great pleasure. As far as we have gone, the country is in a high state of cultivation. Ballston is a pretty village, but we stopped there a few minutes only, to rest our horses, so that I had very little opportunity of viewing it. We drank a glass of the water, and found it bitter and unpleasant to the taste. This morning we have drank freely of the Saratoga water, which has higher medicinal qualities, and from its pungent, acidulous taste, is far more pleasant; indeed, it is not disagreeable. There is little company here at present; the great press of strangers is not felt until about the fifteenth of July.

The village is thriving, and the public houses are numerous, and some of them very large and elegant. We are at the United States Hotel, kept by Mr. Ford, and are as comfortable as one can expect to be in any large establishment.



Our next departure will be direct for Niagara, by the way of Utica. We shall probably reach there in about a week; and thence our route is so uncertain, that after you receive this letter I do not think it will be worth your while to write me until you hear from me again. I doubt if any letter would reach us on the road. . . .

I find clergymen are travelling in all directions at this season. Mr. Walker, of Charlestown, met us at Albany on his way to the Springs, but as yet I have not seen him here.

I have written you this long letter with a view to bring up the arrears of my travels. I have no opportunity to write often, and therefore you must answer from this the inquiries of all the family, as to where and how we are. I dare say you will complain bitterly that you cannot read the handwriting, and I can only advise you in such a case to pass over the passage, and guess at its meaning. What with walking and riding and looking about, I am so fatigued that I can scarcely hold a pen. . . .

You have no notion how difficult it is to find a Boston newspaper here, or anywhere else out of Massachusetts. I have seen only one since I left home, and that was brought by a Boston gentleman in his pocket on his departure from the city on Wednesday last; we are not therefore so important abroad as we imagine ourselves to be; and the vast extent of enterprise, domestic as well as foreign, of the State of New York, puts quite into the shade all our Massachusetts pretensions of improvement and industry.

I am, very affectionately yours,

JOSEPH STORY.

TO WILLIAM FETTYPLACE, ESQ.

Canandaigua, July 10th, 1825.

DEAR BROTHER:

I have had no opportunity of writing you, since we left the Springs, until this morning, and even now I am so



fatigued that I have scarcely strength to hold my pen, and the day is superlatively hot.

We left the Springs on Tuesday morning, having passed two days there. The fourth of July was celebrated in village style, and Mr. W. and I went to the meeting-house in the procession, and heard the oration. It was a commonplace discourse, delivered with little effect. There was not much company at the Springs on our arrival, but it was daily pouring in. We met some agreeable people, and some of them were from Canada. We drank moderately of the waters, and found that of the Congress Spring not unpalatable, and in its effects beneficial and enlivening. The Rev. Mr. Flint was at the Springs, and intended to stay there some days. I saw him for a few moments only, on the evening of Monday.

From Saratoga we took a cross road with a view of striking the Mohawk, and passing on the Canal at Canajoharie. We passed through a beautiful and finely cultivated country, stopped at Galway, where we visited the farm of Mr. Stimpson, (a native of Weston, in Massachusetts,) which is in the highest order. He has about three hundred and fifty acres under cultivation, and the land seemed literally to groan under the burden of its crops. He was so kind as to walk over the whole farm with us; he cuts from four to five tons of clover per acre, and of wheat I am afraid to say how much, for it seemed to me incredible. I think he said that he had grown about five thousand bushels per annum. We dined at Johnstown, about thirty-five miles from Saratoga, a place celebrated for Indian wars, and Indian residence. Sir William Johnson, formerly Governor of New York, a man of great energy of character, who is said to have acquired more influence over the Indians than any other white man, resided in this place. He was a great benefactor of the town, and lies buried under the altar of the Episcopal Church in the village, which we visited, and found it somewhat in decay. I think the land in this township taken together, is the best

and most fertile I ever saw. It was almost one continued scene of the richest luxuriance. Thence after dinner we came to Caughnawaga, about four miles, and there struck the Mohawk, and traversed its northern bank for about twelve miles, the canal being visible almost the whole day on its southern bank, and slept at the lower Palatine, opposite the town of Canajoharie, (on the southern bank,) and separated from it only by a bridge. The country was singularly picturesque and striking, and in some parts we had mountain scenery, particularly in passing the range of hills called Anthony's Nose, which terminates on the north bank, and is suddenly reassumed on the south bank of the Mohawk. It looks as if the river had at some former time broken its passage through this narrow defile, and forced its way to the Hudson. At Canajoharie we took the canal boat for Utica. These packet boats are almost thirty-five feet long, with a single deck or story, in which there are two cabins, one for ladies, and the other for gentlemen. The one on board of which we were, was tolerably convenient, but some of them are said to be far more so. They are drawn by three horses attached to the boat by a long rope, and the largest horse is ridden by a driver who regulates the whole, and keeps them on a brisk walk, of about four miles an hour. Except when you pass a lock, not the slightest motion is felt in the boat, though the rapidity with which the surrounding objects pass by you, is very apt at first to make you a little dizzy. We kept the canal to Utica, passing through a great many locks, which usually occupied about ten minutes each, and arrived at Utica about nine o'clock in the evening. The canal passes, as you may suppose, in a valley the whole way, and is close by the bank of the river, and presents a great variety of beautiful views, growing villages, well painted churches, rich fields of wheat and other grain, and in strong contrast, lofty woods and deep forests, where the axe has never entered. The variety of the foliage and strong growth of the forest trees quite astonished me. There is one remarkable passage

fatigued that I have scarcely strength to hold my pen, and the day is superlatively hot.

We left the Springs on Tuesday morning, having passed two days there. The fourth of July was celebrated in village style, and Mr. W. and I went to the meeting-house in the procession, and heard the oration. It was a common place discourse, delivered with little effect. There was much company at the Springs on our arrival, but it was daily pouring in. We met some agreeable people, and some of them were from Canada. We drank moderately of the waters, and found that of the Congress Spring not unpalatable, and in its effects beneficial and enlivening. The Mr. Flint was at the Springs, and intended to stay some days. I saw him for a few moments only, on the evening of Monday.

From Saratoga we took a cross road with a view of visiting the Mohawk, and passing on the Canal at Canajoharie. We passed through a beautiful and finely cultivated country, and stopped at Galway, where we visited the farm of Mr. Benson, (a native of Weston, in Massachusetts,) which is of the highest order. He has about three hundred and fifty acres under cultivation, and the land seemed literally to groan under the burden of its crops. He was so kind as to walk the whole farm with us; he cuts from four to five tons of clover per acre, and of wheat I am afraid to say he produces for it seemed to me incredible. I think he said that he has grown about five thousand bushels per annum. He lives at Johnstown, about thirty-five miles from Saratoga, a place celebrated for Indian wars, and Indian residence. William Johnson, formerly Governor of New York, lived here, a great energy of character, who is said to have acquired more influence over the Indians than any other white man in this place. He was a great benefactor of the place, and lies buried under the altar of the Episcopal Church in the village, which we visited, and found it somewhat interesting. I think the land in this township taken together



nearly all his life there, never knew them until within the same period. In truth, they were brought into notoriety principally, by Mr. Sherman, formerly a clergyman in Connecticut, who had the misfortune to write a very sensible book against the Trinity, about twelve or fourteen years ago, and was compelled to quit his profession and his State. He now resides near the Falls, and keeps a hotel there, which is as yet incomplete, but accommodates strangers pretty well for a few hours. You will not think so much of the want of knowledge of these Falls, when you consider that the whole enterprise of the country has been employed to clear the wilderness, plant cities, encourage trade, cultivate the earth, and fell forests; and that in twenty-five years the west of New York has been filled with as many villages as Maryland contains in the same territorial extent. Men have had no time to indulge their curiosity; they have been thinking how to live and to grow rich.

But to return to Trenton Falls. The day was quite rainy, and on this account, our visit was in some respects unpleasant; but as the streams were swollen, we saw the cataracts with a bolder and deeper flood, which repays us for the other inconveniences. Trenton Falls are on West Canada Creek, a rapid, turbulent stream, which runs for many miles, between narrow declivities, over a rocky bottom, and at last empties itself into the Mohawk. The Falls properly embrace a distance of about four miles, where the banks are very high and precipitous, formed of a slaty stone lying in narrow strata along the shores. Above, the banks are overhung with forest trees, and there is a tree here called the white cedar, which shoots its pendent branches down to reach the earth or the streams, and gives a fine effect to the scene. Through the whole distance the banks are about one hundred and fifty feet high, and the width, from side to side, is never more than two hundred yards. Conceive yourself arrived at the bank, and you then descend by a staircase and natural steps in the rocks to the very edge of the stream. It tumbles along with

a terrific rapidity, and you at once perceive that it is instant death to fall into the stream, which rushes over rocks, and eddies with irresistible whirls. At the place where you stand, you see violent rapids down the stream, and turning your eyes up, you behold at a short distance a sparkling, narrow cascade of about twenty feet. The path up the stream, which you are to pass, is nothing but a narrow projection of the rocky bank, in some places not a foot in width; in others, so wide that more than two persons can walk by each other. The path sometimes is on the very level of the stream; at others, it rises a few feet. A single false step, and you are precipitated into the gulf below; and so narrow is the way, that you must principally rely on your own exertions, for you can scarcely be assisted. If you become dizzy, you are gone. Here and there chains of iron are fastened into the rock to assist you in holding on; but after all, the passage is one that presents difficulties which require some courage to overcome. Mr. Webster at first refused to go up the stream, and it was not until the latter part of the day that he and his wife went down the banks and visited the principal cascade. Our party had scarcely descended the bank, when a violent rain came on, which wet many of them through; luckily Mrs. Story and myself were under a projection of the cliffs, and were somewhat sheltered. But so discouraged were we by Mr. Webster's account of the difficulties of the path, which he partially explored, that as soon as the shower held up we returned to the hotel. I was disappointed at this result, and determined to make another trial; I went up the stream on the upper bank about a mile and a half, the usual extent of the traveller's route, and then descended, and met, at a little hut fitted up with refreshments, a party of ladies and gentlemen who had just completed their travels. I took a guide and went down the stream, and saw all these magnificent falls in their most imposing grandeur. Having successfully achieved the enterprise, and thinking it less hazardous than it at first appeared,

I determined to go back and take Mrs. Story to the falls. She accompanied me, and we both went along the whole route on slippery rocks, with a drizzling mist and occasional rain. She never betrayed the least symptom of fear, and we saw the whole scene under its most striking aspect, for the stream was continually rising, and parts on which I had walked were already covered with water.

It is impossible to give you a just picture of this celebrated spot. The river winds along, sometimes a little concealed, and opening, as you advance, other grand views. You first meet a cascade divided into two currents by a perpendicular rock, and resembling, in most respects, the common pictures of Niagara. The foaming torrent pours down on one side with resistless energy, and on the other in a long and clear sheet. A quarter of a mile above you meet a second cataract, about twenty or thirty feet high, where the stream, pressed in a narrow ravine, foams down with a thundering noise, and tosses up a wild and broken spray. Immediately below, it is whirled about in broken torrents like the waves of the ocean in a north-east storm, and hurries so swiftly along that you become awed and giddy. It has worn a deep gully in the rocky shore on one side, into which it descends with a perpendicular stream, which lashes it in a thousand eddies. In passing by, you are necessarily in a misty rain, which soon wets you through; and the rocky passage or steps by which you ascend, is on the very brink of the cataract, and the water flowed over the steps from it, as Mrs. S. and myself passed along. It requires some presence of mind to pass this place. As soon as you have gained this height, you meet another and more extensive cataract, scarcely twenty feet removed from the lower one, which is also wider and bolder than that which you have just passed, and in connection with it, presents a scene of wild grandeur, which can scarcely be surpassed. The banks on either side are here higher and more precipitous than below, and lined with barriers of slaty stone, rising like regular walls in a direct ascent, and overhung with



shrubby and forest trees. When we arrived at this spot, the sun broke out with its full splendor, and gave a bright illumination to the surrounding objects. We passed some time at the hut of refreshments just above, and ascended the bank in time to see a rainbow formed by the cataracts below, and returned to the hotel entirely wet.

The next morning (Friday) we left Utica, having paid a few morning visits, and particularly one to my old friend Ezekiel Bacon, who is settled there. Our journey lay nearly directly West, traversing a gently undulating and cultivated country. We dined at Vernon, passed through the large township of Manlius, and the Reservation of the Oneida Indians, and slept at Onondaga Hollow, a very flourishing village, near which the remnant of the Onondaga Indians live. It is very near the Onondaga Lake, on the borders of which are the celebrated Salt Springs of New York. We saw the Lake on our right, and the pretty villages of Syracuse, Salina, and Liverpool, on its banks, at the distance of about three or four miles.

On Saturday we continued our course westward, and passed along the chain of lakes in this part of New York. We stopped two hours at Auburn, near the bottom of Lake Oswego, and visited the State Prison. It is a very large establishment, and by far the best in the United States, both as to construction, size, and discipline. The keeper, Mr. Goodall, was very polite and attentive to us. Skeneateles, at the bottom of the lake of that name, is the most beautiful village I ever saw, in the taste and neatness of its buildings, and is in all respects worthy of attention.

During the few minutes of our resting here, we strolled about, and I met a blacksmith near his shop, with whom I entered into conversation. In the course of it, he stated that he was born in Northampton, Mass., and has resided in the village of Skeneateles about twenty-three years; he was among the earliest settlers, and left home at the age of nineteen, with only nineteen shillings and sixpence in his

pocket. His last fourpenny piece he spent about eight miles this side of Utica, and with some cold provisions, he travelled on to Skeneateles, and there planted himself. He pointed to a fine, nay, an elegant house across the street, as his own; and on this side, four or five shops for different kinds of business, adding, that he had property enough, and felt independent. He pointed out the house of a tailor who had come to the village about the same time, and said that he was worth twelve or fifteen thousand dollars. He also pointed out the beautiful seat of Mr. Kellogg, who came there about the same time, with nothing more than he could carry in his saddlebags, and who now possessed a fortune of two hundred thousand dollars. He said that there were no poor persons in the village, and for a mile round it there was no person who was not a freeholder. In short, said he, an industrious man may get a good living here, and as to the lazy and idle, we contrive to get rid of them. This is probably a fair picture of all the towns in this district of country. They are scarcely any of them thirty years old, and in all of them there is the busy hum of enterprise, industry, and improvement. All the people seem cheerful, for all are improving their condition. All are employed, and paid, and are happy.

We passed a bridge of one and a quarter miles, near the head of Cayuga Lake, also a pretty village called Waterloo, built in 1817, and dined at Geneva, at the bottom of the Seneca Lake. It is a very handsome town, and rapidly increasing. We went into a reading-room, and there found Boston, New York, and London newspapers. Some of the houses are elegant, and many are erecting. From there to Canandaigua is twelve miles, over a beautiful country, rising by gentle undulations or steps about half way, and then descending in the same way. The whole road is equal in smoothness and width to any of our best roads. Canandaigua is at the bottom of the lake of that name, and is a thriving town, having many good houses, and between two and three thousand inhabitants. We have stopped to pass Sunday



here, being worn out with fatigue. To-morrow we start for Buffalo, which we shall reach on Tuesday night, and probably see the Falls on Wednesday. Thence we shall go to Rochester on the canal, and probably there take the steamboat for Montreal, proceed to Quebec, and return by way of Lake George and Lake Champlain to Albany. A letter directed to me at Albany would reach me on my return, which I hope you will not forget. I long to hear from the children. Give my love to all the family, and tell Stephen I always remember him kindly, though I have time only to write one letter.

Yours, affectionately,

JOSEPH STORY.

TO WILLIAM FETTYPLACE, ESQ.

Niagara Falls, July 14th, 1825.

DEAR BROTHER:

We arrived at this interesting object of our journey last evening, just after sunset; but before I say one word respecting it, I must put you in possession of our prior travels. If I remember rightly, I brought up my journal to our arrival at Canandaigua; we passed Sunday at that place, and it was a most severely hot day, the thermometer ranging in the shade, about five o'clock P. M., at ninety-three or ninety-four. We visited a gentleman by the name of Howell, in the evening, who had politely requested us all to take tea with him, and the ladies, as well as ourselves, passed a very agreeable evening. Mr. Howell was formerly a member of Congress. On Monday, we took our departure, and dined at a very bad inn, kept by a Mr. Clark, at Avon; every thing was superlatively bad, — rooms, provisions, attendance, civilities. We slept at Batavia, fifty miles from Canandaigua, which is a very growing and pleasant village among the thriving settlements in Genesee County. It already has the air of a small city, although it seems almost a frontier town just out of the wilderness. Our entertainment was pretty good, though the heat of the weather rendered any thing almost intolerable. On Tuesday



morning we set off for Buffalo, a distance of forty miles, where we arrived about two o'clock, P. M. The road lay through a very flat country, constituting the least settled of any we have passed. It gave us a very good view of the progress of improvement in frontier settlements. At first, the log hut, and then, as the country was cleared, a neat frame house, and finally an elegant country house. Fields of wheat were abundant, and every thing seemed starting into life. The wilderness of yesterday was converted into arable land; the road was much better than our common Maryland roads, although it was evidently reclaimed from the forests within fifteen years.

Buffalo is a very pretty village, at the bottom of Lake Erie. The latter spreads open to you a vast extent, presenting the appearance of an ocean; in short, it is an ocean of three hundred miles in length. You know Buffalo was burnt during the late war, and it has now been rebuilt in a very pretty manner, exhibiting marks of improvements in every direction. On the opposite shore you see Fort Erie, at the distance of about three miles; the Niagara River, which connects Erie with Lake Ontario, commences at this point. From there to the Falls is a northern course, and the distance about twenty-two and one half miles along the shores of the Niagara River. We passed Tuesday night at Buffalo, at an excellent inn, kept by a Mr. Rathbun, and on Wednesday morning we went down to Black Rock, about two and one half miles, and stopped to visit General Porter, who resides there. He politely invited us to dine with him, and we accepted the invitation. You may remember that the Grand Canal terminates at Black Rock, where a large basin has been formed for the canal boats, by running a very long pier parallel with the shore, from Squaw Island to a distant ledge, about one mile in length, and an eighth of a mile in breadth. It is not yet quite completed, but will be a very important work. There is a canal communicating between Buffalo and Black Rock, which connects the former with the Grand Canal.

We had a very pleasant dinner at General Porter's, whose wife is an extraordinary woman in talents and character; I have rarely seen any woman possessing so much wit, genius and knowledge of the world. She is a Kentucky lady, and daughter of the late Mr. Attorney-General Breckenridge, who died before I was appointed to the Bench. After dinner General Porter and Major Frazer accompanied us over to the Canada shore, and visited Fort Erie with us. You may remember that General Porter was at the siege and *sortie* from Fort Erie; and in the latter engagement Major Frazer was present, and was wounded. He spoke to me of poor Horace<sup>1</sup> with great kindness and respect. The fort is now in ruins having been blown up by the Americans in the evacuation, in December, 1814. We examined all the works, and Major Frazer pointed out to us the battery of Lieutenants Douglas and Story, where each commanded a gun. It is just on the sea-shore, and pointed to the first redoubt of the British on the river. At the attack on Fort Erie, this was the point at which the British Colonel Scott led his column, (the British left,) and was repulsed with great gallantry. You may depend upon it, that the exposure to the enemy was here constant and very perilous, and that at all times Horace was in a post of great responsibility and danger. I picked up a stone from the barracks of the fort, and put it into my pocket, to bring home as a reminiscence of Fort Erie. The redoubt where Horace was, is now almost demolished. General Porter pointed out to us the points of the *sortie*, and we saw the place where the killed were buried, and particularly where Colonel Drummond was interred, on the right of the British who fell in the contest. I was a good deal affected at the recollections which the scene inspired.

We took a stage-coach about five, P. M., and passed over the ground of the battle of Chippewa, which is now a culti-

<sup>1</sup> Horace Story, brother of my father, and Lieutenant in the United States corps of Engineers.

vated field, and arrived at Forsyth's Hotel, [now the Clifton House,] just at the edge of the Falls, in time to get a glance of them before night. The hotel stands on the very brink of their upper margin or terrace, and from the back window where I am now writing, the British and American Falls are in full view. But I must now go and dress for dinner, and therefore stop my journal until my next moment of leisure.

It is impossible to describe the Falls of Niagara in such a manner as to give an adequate idea of their stupendous magnificence. We have viewed them as yet only on the English side, meaning to cross over this morning to the American; but all travellers agree that the English Falls are far the most striking and awful. There are probably two banks of the river, the upper bank or ridge on which the hotel stands, and which overlooks the whole Falls, and to which the river is supposed, at some very distant period, to have flowed, and the lower bank, which is a descent of about one hundred and fifty feet, and meets the water just before it plunges over the precipice. The precipice is about one hundred and fifty feet, and the breadth of the English cataract extending to Goat Island, which divides the river, is about seven hundred yards over. The current falls over this vast distance in an unbroken sheet. The form of the English Falls has been not unaptly compared to a horse-shoe, though from some positions it more nearly resembles a waving line in its form. The roar of the torrent is continual, and though often described as being as loud as thunder, it is wholly different, and is like the roar of Marblehead shore during a very heavy north-east storm. I think the sound is about as loud, and so much resembles it that I am perpetually reminded of it.

Nothing can be more grand and imposing than the whole scene; the immense body of water descending with irresistible power, the long line of rapids above for half a mile, where the water tosses and tumbles before it reaches the cataract, the brilliant greens which the sunshine paints on the falling



mass, sometimes mixed with the purest snowy white, the foam below perpetually rising in a white mist, and forming into clouds on which rainbows may be seen morning and evening, and sometimes at noonday, — give an indescribable awe to the whole scene. It is a sense of Almighty power, working its way far beyond the control, and almost the thoughts of man.

All our party went down below the Falls by a spiral staircase, and had a fine view of them there. We approached the very edge of the sheet, and were covered with a driving, misty rain, and wet through to our very skins.

I wrote you thus far on the British side, and by hasty snatches, in a room common to a large number of persons. I was interrupted by the call to breakfast, and soon afterwards we bade farewell to the Canadian shore, and took our passage to the American side in a small boat, which crossed just below the Falls, in the midst of their whirlpools and eddies. The place where we landed was not more than three rods from the American cataract. We ascended the steep bank by a staircase not yet finished, and I now write you from Mr. Whitney's hotel. I am sorry to say that the over fatigue of visiting the various points of view yesterday, has made Sally quite sick, and I really feel a little alarmed lest she should be too much indisposed to proceed for a day or two. It is now noon, and as yet I have not made the slightest excursion on the American side.

I have told you that we descended the bank to the very shore of the river below. It is not at all dangerous, but very fatiguing. From this level we had a grand view of the British and American Falls, the latter being at a distance, and lessened both in effect and in magnitude. I have said that it is impossible to describe them, and certainly it is so, because the grandeur of the water in its bold and precipitous descent, the fury of the motion, the deep and reverberating and confused sounds of its rush into the lowest cavities worn by its incessant stream, the beauty of the inter-

...rying tints of green, and fleecy white, some-  
... columns, and sometimes in mingling masses,  
... and foamy mists, the conical risings and explo-  
... dies and whirlpools of intermixed air and water,  
... effect of depth, breadth, height, and perpendicularity  
... rapid Falls of this terrific stream, cannot be described.  
... viewed the whole scene at sunrise, at sunset, and at  
... day; and the more I have seen it, the more it has risen  
... majestic, I should rather say, in overwhelming power and  
... magnificence.

Many travellers complain that they are disappointed with the view; they think it is not equal to what their own imaginations had painted. I cannot say that this was so in my case. But as I had heard these tales before, I was somewhat prepared to be disappointed. Certainly the first view is not so imposing as every succeeding view. If you are not accustomed to measure heights and distances, and to feel the dreadful and irresistible effects of mere power in the fall of water, you may not be at first much moved. I imagine, however, that the disappointment at first view arises from the inability to embrace the whole of these vast objects at a glance. The vision is deceived, and you expect to be terrified when you are only awed. The foam, too, that rises from the depths below, reaches midway up the Falls and obscures their real extent and depth. But the rapid descent of the current and the awful silence which everywhere prevails under its stunning roar, and the consideration that there is but a single step between you and eternity, soon awaken you to a sense of the real sublimity of the scene. There is here no gloomy grandeur borrowed from the presence of surrounding objects; the Falls are in the broad glare of sunlight; you do not descend into dark dells or precipitous ravines to contemplate them. They stand in the open day, unassisted by any external objects to aid their effect. The woods on the margin of either shore scarcely attract your notice; they are lost in the general effect. You look on



nothing but the cataract; you think every thing else insignificant; you scarcely know that you tread the earth, unless when the sense of your own insecurity presses upon you. Trenton Falls, and the Cascades of the Catskill Mountains gain additional grandeur from the scenery, the dark overshadowing woods, the deep and dusky glens, the dangerous and gloomy descent. Niagara courts the open day; it seems to disdain concealment, and owing nothing to surrounding objects, chains your admiration and reverence by its own single, solitary, matchless power.

One thing occurs universally, and that is, the more the Cataracts are viewed, the more they gain upon your wonder. I have examined them often, and every time with increasing enthusiasm and awe. We yesterday saw them in the clearest sunshine. At mid-day, in the gulf below, there was a horizontal rainbow; and in the evening, just before sunset, a magnificent rainbow spanned the whole arch from one Cataract to the other, in a perfect semicircle. Nothing could be more enchanting or sublime. The three principal views are from a projecting point of the upper bank, from Table Rock on the verge of the precipice, and from the lowest depths of rocks which rise and over-canopy the flood by their mighty but decaying excavations. The pictures of this place are in general just and accurate, but they cannot communicate the sense of immense power and irresistible motion which the actual view necessarily gives. At different points of observation they appear very differently; but in all truly sublime. The view below the Cataract has more awful grandeur, but that from Table Rock or from the upper bank is more affecting, by the mixture of beauty, elevation, and power with the sense of reverence. In crossing the stream we had some noble views of both Falls, but with the whirls and eddies in which we were driven and boiled up, the consciousness of less safety lessened somewhat their effect. It is generally thought the best view; I think far otherwise, although I never felt more at ease in my life. The



best view is from Table Rock, or the abyss immediately below.

It is now evening, and I have just returned from viewing the Falls from the American shore. Goat Island, as I have before stated, is situated on the main river and divides the cataracts. On the American side there is a bridge erected over the rapids to it. A small island intervenes, on which part of the bridge rests, and there is a house of refreshments and a bathing-house. The distance from Goat Island to the main land is about one quarter of a mile, and the view of the river, as it sweeps under the bridge, is terrific and sublime. It gives you a perfect notion of the velocity of the rapids and the stream, and by its very swiftness makes you almost dizzy. I should think the current here runs twenty-five or thirty miles an hour, over rocks and shelves, narrows and shoals, foaming and tumbling and breaking boisterously. After passing over the bridge, which is perfectly secure, though it looks otherwise, you go along the margin of the island, and have a very fine view of the American falls in all their vastness. By continuing your course round the island you have various views of the British falls, not quite so grand as on the opposite shore, but still very magnificent, and full of the deepest interest. I shall never forget the scene while I live.

It is now dark and I must stop; you must not wonder if half I write is illegible, for I have not time to examine it, and my fatigue renders it difficult for me to hold my pen. We are on our return, and shall come home direct, without going to Quebec.

Yours affectionately,

JOSEPH STORY.

TO WILLIAM FETTYPLACE, ESQ.

Manchester Village, Niagara Falls, July 16th, 1825.

DEAR BROTHER:

Being unable to obtain a carriage to take us to Lockport this morning, we are necessarily detained at this place. I have, however, employed my time very agreeably in rambling over Goat Island, and in looking at the falls from almost every important point. The staircase descending to the river on the American side, is within a very few feet of the great American Falls, and from about midway down, where it faces them, I think there is one of the finest views that can be imagined. On your left, and just before you, there is an oblique view of the whole American cataract in its fullest height. The stream on this side, unlike that on the British, descends upon a rocky shore and not into the river itself, so that, if you have no objection to being wet with spray, you may take a stand on rocks at its very base, and within three or four yards of the main sheet. But to recur to the view from the staircase. Beyond the American cataract, Goat Island being wholly concealed, you see in a continued line the whole British Falls, so that you imagine them to continue quite round, a part only being necessarily intercepted from the eye of the spectator. The clear white of the American Falls, and the thin and somewhat broken streams of those on the other side nearest Goat Island, shaded by the projecting dark rocks which remain uncovered by the sheet, and surrounded by large stones which seem to have been rolled down from the adjacent heights upon the very edge of the precipice; farther on, the deep central current, with the loveliest and most brilliant interchange of streaks of green and white, alternately succeeded by, and lost in each other; and lastly the bright, sparkling white of the most distant Canadian falls,—these present a picture so striking, that I am inclined to think it quite equal to any which can be found else-



where, and fills the soul with the most profound admiration. The elevated shores rising like battlements on each side, almost perpendicular, composed of rocks in such regular strata that they seem the work of exact art; the river far below with its thousand currents, and the passage of boats from both sides, which look like feathers dancing on the rapids and eddies, give a picturesque effect to the whole scenery, which is utterly beyond any description. By walking a few steps you may see the rapids above the Falls, hurrying down between Goat Island and the main land, with a headlong impetuosity sufficient to alarm you with the sense of danger. . . .

Before we left the Canada shore, I went, in company with Major Kirby, one of General Brown's Aids, to view the spot where the battle of Bridgewater, or Lundy's Lane, was fought. It is about a mile from Forsyth's Hotel; many of the marks of the ravages of that day are gone, but you may still perceive the broken ground where the dead were buried, and in the remaining trees many traces of shot. A gentleman who was a little before us, picked up a button of the one hundred and fourth British regiment. The place where the British artillery was posted is on a gentle elevation on the left of the road, or Lundy's Lane, which runs nearly at right angles with the river. A wooden church formerly stood on the very spot, but was demolished, and the common graves of the parish, as well as those of some British officers who fell in the engagement, are still visible. The latter have a board painted black with white letters, telling who lies below, and they are generally inclosed in a wood paling. So gentle is the rise of the place, that until my return, I was scarcely aware that it could have given such means of annoyance to the British. In truth, our troops were cut up terribly by the fire of the artillery from this position, and if General Miller had not carried it by the most cool and deliberate courage, I do not see but that our army must have been wholly destroyed, unless they had



retreated, and a retreat would have been almost equal to a rout. The distance, which General Miller had to advance under the most entire exposure, is at least a quarter of a mile, and the rail fence at which he paused to take breath, and bring his troops together, is not more than two hundred yards from the position of the artillery. If he had been distinctly seen, the carnage must have been very great, but he was at the very mouth of the cannon before the artillery-men knew it.

Nothing is more visible than the difference between the enterprise and industry of a Colonial, and of an Independent Government, from the mere comparison of the opposite shores of Canada and the United States. In Canada all seems listless and stationary; on the American shore the busy hand of improvement is everywhere seen. Houses and mills and cultivated fields start up before you. The very population seems different in character. Yet the Canadians over the river, are, many of them, natives of the United States, but they seem to have lost their caste. . . .

Troy, July 25th, 1825. Since I wrote the foregoing part of my journal, a considerable time has elapsed, during which, either from constant travelling or indisposition I have been unable to continue it. We left the Falls, on Sunday the seventeenth, and passed down the river Niagara as far as Lewiston, a distance of about seven miles. It is a pretty village, but is stationary in its prosperity, I suppose from the effects of the portage of goods being destroyed by the Grand Canal. Opposite to it, and on the British side, is Queenstown, the scene of an important engagement during the late war, where General Brock was killed. On the heights of Queenstown, which were in full view, reaching to the very verge of the river, is the monument to him, erecting by order of the British Government. It is to be built of stone, and is now about two thirds finished. It strikes the eye by its simplicity and propriety very agreeably. The Falls of Niagara are supposed originally, at some very distant period,

to have commenced at Lewiston, and to have gradually worn their way backwards to their present station. One reason for this supposition is, that the banks of the river continue of the same height from the Falls down to Lewiston, and there suddenly sink down to the level of Lake Ontario, and the whole course is filled with whirlpools, eddies, and currents, so that there is no passage for boats except immediately at the Falls, or at Lewiston. The sides of the banks, too, indicate the former passage of water through them, and are composed of strata of limestone, and slate, for the depth of nearly two hundred feet.

From Lewiston we proceeded to Lockport, about twenty-three or twenty-four miles. This place has grown up within three or four years, and now contains about fifteen hundred inhabitants. It is distinguished by the great combination of locks made for the Grand Canal. They are five in number, each rising an elevation of twelve feet, and are double, so that a boat can descend in one while another is ascending in the other. The whole work is executed in solid limestone, rough-hewn, and is an elegant piece of masonry. In the centre, as well as on the sides of the combined locks, are flights of stone stairs conducting you from one level to the other, so that the whole may be seen at a single glance. The cost was about \$140,000. At this place the canal passes through a ledge of limestone for about three miles, which it has been necessary to blow out with gunpowder, for the depth of fifteen feet, and in some places of thirty feet. The whole is now so nearly accomplished, that in two months the canal will be open through its whole length of three hundred and sixty miles to Lake Erie. Many beautiful minerals have been excavated from the rocks at Lockport, of which I saw a good collection in possession of Dr. Johnson.

From Lockport we departed on Monday morning for Rochester, a distance of about sixty miles, and arrived there late in the evening. Our way lay entirely over what is called the Ridge Road, being a natural elevation from the surround-



ing country, of about fifteen feet high, and from four to ten rods wide, running nearly parallel with Lake Ontario, and supposed to have been at some former period the elevated shore of the lake itself. It is a beautiful road, uniformly level, and was principally cut through the woods by General Dearborn, during the late war, to facilitate our military transportations.

Rochester is a beautiful place, containing about five thousand inhabitants, built up among the woods since 1815, and principally within five years. Many of the houses, public and private, are very handsome, the public accommodations excellent, and the luxuries even of a capitol, are found. It stands on the Genesee River, a few miles above its mouth, and the Grand Canal passes through it, and is carried over the Genesee on a fine stone bridge, containing a number of arches, all of rough-hewn stone. You seem to be in a place of enchantment at Rochester, and can scarcely believe your own senses, that all should have been the work of so short a period. There are here two falls in the river, of a considerable height; but as the water was low, they did not produce upon us any strong impressions.

On Tuesday afternoon we left Rochester, and passed the night at Palmyra, a distance of twenty-three miles. Here I was taken quite ill, so that we were obliged to remain there all Wednesday, during which time I was under the care of a physician. I am now greatly better, but not wholly well. My disease was occasioned by the very great heat of the weather, which has been unexampled in this part of the country, and my exposure to it was very great. From Palmyra, on Thursday, we went on our journey, and lodged at Elbridge. On Friday we went to Syracuse, and visited the great Salt Works there. Those at Salina, about a mile and a half distant, are principally carried on by boiling the water; those at Syracuse, by evaporation in the open air. The water, when taken from the springs, (for all comes from a common source,) is about seven times stronger than sea water; a bushel of salt may be made from about forty-five



or fifty gallons of the water. I saw the water in various stages of evaporation, and a great many beautiful crystallizations of lime and of salt. The first deposits are crystallizations of lime, sulphate of lime, and carbonate of lime; and then the salt is gradually formed, and deposited in fine white crystals.

We made a long day's journey on Friday, and slept that night at a place called Bridgewater. On Saturday we travelled all day on the great Western Turnpike, passing through, and dining at Cherry Valley, at an inn kept by a Mr. William Story, a native of Norwich, Conn. We slept that night at Schoharie Bridge. Just at the close of our day's journey, we were overtaken by a violent thunder storm, which struck a barn on a hill we had passed over but a few minutes before, and the whole being in an instant in flames, produced a terrific effect, illuminating with a red and fiery glare the darkness of the clouds. We stopped at a small inn until the violence of the storm was over, and then reached our journey's end in safety.

Yesterday, (Sunday,) we rode in the morning to Schenectady, and passed the day there. It is an old town, rather declining, but having a fine college in a flourishing state, with very good buildings. Our accommodations at Mr. Givens's inn were excellent, and at five in the evening we left in a coach for this place, where we arrived just as the day closed.

This is a very flourishing place, at the head of sloop navigation, and will probably become a place of great importance. It is full of activity, and contains now six or seven thousand inhabitants. I have not time to write more, being exhausted in mind and body by the excessive heats. I long to be at home, to get some repose and some appetite, for I can truly say that I never felt so little of the one, nor possessed so little of the other. Sally is pretty well, but like myself, wearied out.

We intend leaving this place this afternoon, and to proceed through Bennington to Brattleborough in Vermont, and thence in the most direct stage route to Boston. We shall

probably reach Boston on Thursday night, and I hope to be in Salem on Friday.

I have sent to Albany this morning, hoping to find some letters there from you to me. The newspaper has not yet arrived. It is so long since I have heard from home, that I am exceedingly anxious. Give my love to all the family, and believe me, affectionately, yours,

JOSEPH STORY.

## CHAPTER XIV.

### JUDICIAL LIFE.

CASE OF "BANK OF THE UNITED STATES *v.* BANK OF GEORGIA"—LETTER EXPRESSIVE OF FEELINGS TOWARDS ENGLAND, AND IN RESPECT TO MR. RUFUS KING'S APPOINTMENT AS MINISTER TO ENGLAND—INAUGURATION OF MR. ADAMS AS PRESIDENT—SKETCH OF MR. OWEN OF LANARK—LETTERS ON THE PANAMA MISSION—THE ENGLISH CATHOLIC BILL—COUNSEL TO PRISONERS IN CRIMINAL CASES—DEATH OF MR. JUSTICE TODD—"THE MARIANNA FLORA"—REVIEW OF DANE'S ABRIDGMENT OF AMERICAN LAW—ORATION BEFORE THE PHI BETA KAPPA SOCIETY—EXTRACTS—ADMIRATION FOR MISS AUSTEN'S NOVELS—LETTERS EXPRESSIVE OF HIS RELIGIOUS VIEWS—CASE OF "BANK OF UNITED STATES *v.* DANDRIDGE"—DEATH OF HIS SISTER, MRS. WHITE—POEM ENTITLED "REFLECTIONS ON LIFE"—ARTICLE ON THE LIFE AND SERVICES OF CHIEF JUSTICE MARSHALL—EXTRACT FROM IT.

In the beginning of the year 1825, my father attended the session of the Supreme Court at Washington. The most important judgment pronounced by him during this session, was in the case of *The Bank of the United States v. The Bank of Georgia*. In this case, the effect of a payment to a bank in forged paper, is thoroughly and ably discussed. The rule asserted is, that although a payment in forged paper or in base coin is not ordinarily good, yet that this rule does not apply to a payment made *bonâ fide* to a bank *in its own notes*; and if it receives those, which are forged, without objection, it must, in the absence of all fraudulent intent on the part of the payee, bear the burden of its negligence



or ignorance. It also lays down the doctrine that bank notes are a good tender, unless specially objected to. This is a leading case on these points, and is drawn up with much ability and care.

An unfounded report which obtained currency at Washington during this session, is thus alluded to in a letter to my mother, dated February 20th, 1825. It is interesting as showing how little my father sought or desired political honors or posts.

“ Among the strange rumors, that have circulated in this city, there has been one respecting myself, that quite surprised me. It was said, that if Mr. Clay declined the appointment of Secretary of State, Judge Story would be appointed to that office. I quite laughed at the tale. One surely need not decline an office which is not offered to him; but I may say that in my situation, I should think it madness to have accepted such an office. I have quitted political life, and have no intention of ever returning to it.”

On the return of Hon. Mr. Denison to England, after a journey through the United States, my father wrote to him as follows:—

TO HON. J. EVELYN DENISON, M. P.

Salem, near Boston, June 4th, 1825.

MY DEAR SIR:

. . . It was a great disappointment to all your friends in this quarter, especially to me, that you did not again visit us before your return to England. I do assure you the welcome would have been most sincere and hearty. Unfortunately for me, I was absent at the time of the arrival of your farewell letter, so that I had no opportunity of reciprocating your kind adieu. I was at that time on my Eastern

Circuit, and travelled homeward with no small expedition, in the hope of meeting you and your friends.

I look back with great satisfaction upon the pleasant hours I have had an opportunity of passing with you. The recollection, indeed, is not unmixed with melancholy, when I reflect that an ocean rolls between us, and how many perverse circumstances may prevent me from ever seeing you again. My only chance of visiting England depends upon new arrangements in the judiciary system, which should relieve me from circuit duty; and you well know how uncertain legislation on such subjects is. Perhaps, you may hereafter revisit us, and if I could be indulged in my wishes, it should not be long before you should represent the sovereignty of England here. In whatever situation you may be, believe me, my dear sir, you will always have my most earnest wishes for your success and happiness. . . .

I have never indulged unfriendly sentiments towards England; but I am ready to admit that I now take a deeper interest in her fate than ever. I feel myself knit to her by kinder ties. You must look well to your ways in Parliament, for I shall examine your yeas and nays with a scrutinizing glance, and venture to judge all your votes, with the intense interest of a friend. Thus you perceive that you have already incurred, by your visit to us, a new responsibility, a sort of amenability to American opinion. Webster and myself will talk over at our firesides all your parliamentary topics, and cheer your votes with "hear him, hear him!"

You ask me what I think of Mr. Rufus King's appointment. I am greatly gratified with it on many accounts. He is an experienced statesman, liberal and frank, friendly to England, and disposed, as I think, to negotiate in all points of dispute upon principles of just and generous policy. Such a man may do great good to both countries, and with such a ministry as England now possesses, a ministry that deserves the respect of the world for its dignified and enlightened pub-

lic policy, it is hardly possible that any serious obstacles should arise in adjusting all difficulties. . . .

I suppose you will be too late for the Catholic question in any of its stages. I vote with Mr. Canning; his speeches on the subject are admirable in temper and matter.

I am, my dear sir, most sincerely,

Your obliged friend and servant.

JOSEPH STORY.

The next letters were written during the session of 1825, at Washington. The first contains an account of the Inauguration of Mr. Adams as President, and the second a sketch of Mr. Owen, of Lanark, the founder of the new scheme of Socialism.

TO MRS. JOSEPH STORY.

Washington, March 4th, 1825.

MY DEAR WIFE:

. . . The Inauguration is just over, and we have been paying our respects to the President and the Ex-President. The ceremony took place in the Hall of Representatives, in the presence of the Senate, the heads of Departments, the Foreign Ministers, and an innumerable crowd of ladies and gentlemen. For five days great numbers of strangers have been pouring into the city to attend on this occasion, and the whole avenues were crowded to excess. At twelve o'clock, the Judges in their robes accompanied the President to the Senate Chamber, and there a procession was formed, and thence we went in troops to the House. Mr. Adams, from the Speaker's chair, delivered his address with great animation and energy, and though he trembled so as hardly to hold his paper, he spoke with prodigious force, and his sensibility had an electrical effect. His speech was one of the best I ever heard, — strong, sustained, correct, and liberal, beating down party distinctions, and leading the way to



a manly exposition of the Constitution. It is everywhere very direct and unequivocal, and will produce a great sensation of approbation or of disapprobation. I think you will like him the better for it; and sure I am that all will agree that it is fearless and independent and meeting public responsibility.

After the ceremony was over, the whole cavalcade, military and civil, proceeded *en masse* to Mr. Adams's to pay their respects to him, and congratulate him on his election. The crowd here was terrific in numbers, and it was almost impossible to get out or in. Thence we went to the Ex-President's, (Monroe,) and there again the tide of human life met us in an almost overwhelming manner. The towns in this vicinity are literally unpeopled, and the streets of the city were busy with the hum of all sorts of noises. It has been a day of great gayety and joy. . . .

Give my love to the children, and tell Miss Louisa I will come home and play blind-man's-buff, if she will be a good girl.

Yours most truly and affectionately,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, February 9th, 1825.

MY DEAR WIFE:

. . . . On Monday we continued our journey to Lancaster. There we met a very extraordinary man, Mr. Owen, of Lanark, in Scotland. I do not know that you are at all acquainted with his history and character. I, myself, have but a very imperfect knowledge, but I believe the Edinburgh Review contained some years since a sketch of his character and works. He is a man of large fortune, and the owner of a very extensive cotton manufactory at Lanark. He has now under his control and care about two thousand five hundred persons, who are governed by him without rewards or punishments, upon the single ground that every

man will choose that which is for his happiness, if he is well instructed as to what it is. I understand that the children of his workmen are all educated by him together, without restraint, playing when they choose and studying when they choose. His whole scheme is so romantic that it would seem but a dream; yet he has tried the experiment for twenty years, and it has entirely succeeded. He has come to America to try his plan here. Believing in human perfectibility, he is satisfied that all the existing evils are founded in the institutions of society. He thinks property ought to be held in common, and is so benevolent and yet so visionary an enthusiast that he talks like an inhabitant of Utopia. However, he is very simple in his manners and pleasant in his conversation, and gave a considerable interest to the residue of our journey.

Yours very affectionately, in haste,

JOSEPH STORY.

The following letters, written during the year 1826, treat, among other matters, of the Panama Mission, then agitating in Congress; the Catholic Bill in England; the question whether counsel should be allowed to prisoners in capital cases; and to the death of Mr. Justice Todd, of the Supreme Court of the United States.

TO J. EVELYN DENISON, ESQ. M. P.

Salem, January 20th, 1826.

MY DEAR SIR:

It was quite late in the autumn when I had the pleasure of receiving your interesting letter of the fourth of September. At that time I was in the midst of my Circuit Courts, and am but just released from the burden of deciding the last law causes. It must have been truly delightful to you to meet your old friends after so long an absence, and I really envy you the gratification of treading your native soil.



How glad should I be to have an opportunity of visiting it! I fear, indeed, that the time is not near, though I cannot and will not be persuaded that the project is hopeless. There is no private consideration which would delay me, but the hard pressure of public business is perpetually on me, and I look for relief to a change of system, which, if it comes at all, is now I fear, somewhat distant.

Mr. Webster and I, with our wives, visited Niagara during this summer. We were absent about six weeks, and returned delighted with our journey. We toiled very hard in order to see every thing, and were amply repaid for our labor. . . . Mr. Webster has a giant's constitution, and can bear every sort of fatigue; but I was a good deal overcome and exhausted, and returned in very indifferent health. This was partly owing to the extraordinary heat of the summer, a heat which for intensity and duration is probably unexampled in this country. The New York Canal is now completed, and the waters of Erie and of the Ocean are united.

Among our circle of friends nothing new has occurred which would interest you; we have had few marriages, for we have few bachelors. I now understand the reason of Mr. Stanley's sudden departure for England, and beg to congratulate him on his new state, which I hope will be his happiest. . . .

You will perceive, by the President's message, that he holds out very liberal views in respect to England. I rejoice at this, because I think it the truest policy for both countries. Our interests in all the main points of national policy, commerce, and political economy, are, if not coincident, certainly not at variance. In the defence and support of liberal opinions, political liberty, and national rights, they are essentially the same. Our common language and institutions, and as I trust in the future, our common contributions to science and literature, must form ties of connection which will produce and perpetuate mutual friendship and



respect. We have been hitherto separated by mutual mistakes of character which are daily disappearing, and the influence of such a man as Mr. Canning, will I doubt not give an impulse to English feelings favorable to our best wishes. Can any American be insensible to the land of his forefathers? Can he look upon its past and present glory without a conscious pride and interest in it?

Pray allow me to say a few words of Mr. Canning. I had followed you to the seat of Mr. Bolton and the Lake of Windermere through the newspapers, before I received your letter. And it was no small source of pleasure to me that Mr. Canning could learn from one who had no motive to exaggerate or disguise, what we are, and how we are. What America has wanted, has not been praise, but justice; not panegyric, but downright fact. You have seen us for yourself. We could not, if we would, have concealed our deficiencies from your observation. We are not ourselves insensible to their existence, and perhaps not wholly to their real magnitude. But we believe, that we are outgrowing some of the difficulties of a new country, a new government, and a rapidly increasing population. I rejoice therefore that the opportunity has been given to Mr. Canning, to gather something of our real character, feelings, and interests. And, my dear sir, no one could better than yourself, present us favorably to his view.

I entertain a very high opinion of the talents and character of Mr. Canning. England has rarely possessed a minister, who followed her real interests upon principles so true and enlightened. He is a statesman fitted for the age in which we live, and the appeals which he makes are to the judgment of all nations, and not to the selfish feelings of one. He is felt therefore, in his measures, far beyond what may seem their immediate range, and his influence stops not at the narrow boundaries of the channels. It pervades the public mind wherever his speeches can be read. I have watched his progress with no inconsiderable interest and soli-

citude, and I read his speeches not merely as admirable models of parliamentary oratory, but for instruction and profound meditation. I find it very hard to disagree with him, and upon the Catholic question my whole mind and heart are with him. I cannot feel the argument on the other side but as one of prejudice, undue fears, or sad bigotry, nurtured by the history of past times, but which should be forgotten in ours. In America we have universal freedom of religious opinion in theory, and in a very large sense in practice. We deal with Catholic as with Protestant faith, and we find no inconvenience from it. My own opinion is, that Catholicism, as a political engine, is annihilated the moment you destroy those combinations which persecution and inequality of condition nourish and stimulate. The religion, as such, may continue to subsist, but it will acquire the mildness of Protestantism, and the spirit of inquiry and the influence of learning and of public opinion, will then be more formidable destroyers of Papal influence than all the penal statutes in the world. The very remnant of your penal enactments against Catholics is a rallying point of faction. You have done too much, or you should do more. I beg pardon. I am dealing with a subject on which you are called to act, and the whole ground has been surveyed by you and your friends with infinitely more judgment than I can presume to offer. Yet my pen almost involuntarily ran into the subject, and your manly views, if they should cost you somewhat of popularity in Staffordshire, will endear you to many friends on both sides of the Atlantic.

You allude to several important measures which will be before Parliament this winter. I hope to read the debates at large, and now feel that I have a double motive, — that which arises from public views, and that which is awakened by private friendship. On the subject of allowing counsel in capital felonies, my judgment is entirely made up in its favor; I cannot comprehend the force of the argument on the other side. If it be that the Judges are counsel for the prisoner,



the argument extends equally to cases of misdemeanors ; yet in the latter, counsel are allowed. If it be, that there will be an additional consumption of time in defences, I answer not merely that it goes to the right of counsel generally, but that it is absurd to say that men shall be without assistance, when their lives are in jeopardy ; and yet shall have every aid, if but a penny is in controversy. Life, at least in judicial inquiries, should never be held cheap ; justice should not only be administered, but it should be believed by the public to be so ; and what can more conduce to such an effect, than the unlimited right to maintain your cause by all that the laws, and the talents of your country can bring in aid for your deliverance ? It is in vain to tell me that a Judge is, or can be in any just sense, counsel for the prisoner. There are many distinctions, many principles of construction, many illustrations of evidence, many debatable points which, supposing him alive to every cause, always learned, always seeking for light, will elude the grasp of his mind. And after all, how much is gained with a Jury by an advocate, who has sifted all the facts with a cautious and persevering vigilance, and who brings the feelings of his client in aid of a professional duty. I have been a Judge fourteen years, and my experience has never led me to doubt the advantage of counsel to prisoners. I have been often instructed by them, and have seen the cause in other and better lights by their labors. Above all, I have seen the public follow convictions, after such appeals from counsel, with a ready and prompt satisfaction of mind. Surely no wise Government can wish to procure convictions where reasonable doubts may weigh with a Jury. And Judges, who are true to their own duty, never need fear that counsel will draw away intelligent jurymen from them. In America there is not a State where the right is not universally secured by law, in all criminal trials. In most of the States it is a provision ingrafted in their constitutions of Government. The constitution of the United States secured it in the largest extent. I never



heard a professional man complain of this. I never knew its utility doubted by a Judge. I never, personally, had the slightest reason to think the privilege abused; and I feel a strong persuasion that it is a great security against popular factions in favor of high criminals. These considerations I beg to submit to your better judgment. . . .

I observe you smiled a little at my direction of my letter to you by Mr. Dutton, from its address to you as "Honorable," and as "at London." In respect to the latter, I did not happen to have at the moment any particular direction, and Mr. Dutton promised to deliver it personally. But I will not admit, that even in the world of London, a letter directed to an M. P., ought not, without more, to reach its destination. As to the other, I plead guilty; but I am not so much in fault as you suppose. I observe, in examining the parliamentary debates, that, by the courtesy of the House, members are usually addressed as the "Honorable member," even when they have no other right to it but as members. Now, I think I may fairly put it as an argument, *ad verecundiam*, that I cannot be very wrong when I follow the usage of Parliament. However, I submit to authority, as a Judge is bound to do, and hereafter shall address you as the law prescribes.<sup>1</sup>

I go in two days to Washington, to attend the Supreme Court, and shall write you from there, if any matter occurs in Congress or elsewhere, which may be interesting to you. If at any time I can be of aid to you in procuring books or public documents here, I beg you to claim my services in the most unlimited manner. In respect to English books, my opportunities of getting them are usually very easy and ready; but I am without any means of obtaining parliamentary reports, respecting the law department. I passed no inconsiderable time last winter in looking over the reports

<sup>1</sup> The title "Honorable," in England, though applied in the courtesy of debate to members of Parliament, belongs strictly only to the sons of the nobility.

of the Committee of Parliament, respecting the public records, and particularly those volumes which dealt with the Law Records in the Tower. . . .

I hope some of your friends will follow your good example, and visit America. Remember me most kindly to Mr. Stanley, Mr. Labouchere, and Mr. Wortley. I shall write to the latter by this same conveyance.

I have put up two or three small pamphlets for you, which I shall ask Mr. Vaughan to allow me to send with his despatches by his Majesty's packet. These pamphlets are no otherwise important, than as they may remind you of gentlemen whom you have seen in America.

Believe me, my dear sir, with the truest regard,  
Your most obliged friend and servant,  
JOSEPH STORY.

TO SAMUEL P. P. FAY, ESQ.

Washington, March 8th, 1826.

MY DEAR FRIEND:

I would gladly have written to you at an earlier period, but I have been a good deal indisposed, and am hardly yet able to perform any extra duty. I had a severe attack of influenza on my journey hither, which laid me up for a week, and I have since had a sad turn of the sick headache, which lasted a whole week, and from which I am but just recovering. So you may readily perceive that, to me at least, Washington has had no very brilliant attractions this winter. I doubt, indeed, if it has been very gay to any persons, except perhaps to young ladies, who are displaying their beauty and loveliness, that they may attract admiration first, and afterwards love; and to beaux, young and old, who flutter about because they have nothing else to do, and are wearied of time, of thought, and of themselves. . . .

The Panama Mission is the great point on which the opposition now hinges, and it has met with every sort of delay.

The mission will ultimately be confirmed by a small majority in the Senate, and then there will be a full and glorious debate in the House on its policy. I incline to think the debate will be one of the most animated that has stirred the passions of men here for thirty years. Mr. Everett intends to make his *debüt* on this occasion, in his best manner. He now devotes himself very sedulously to the business of the House, and is thus preparing the way for future effective influence.

The Court has been engaged in its hard and dry duties, with uninterrupted diligence. Hitherto we have had but little of that refreshing eloquence which makes the labors of the law light; but a cause is just rising, which bids fair to engage us all in the best manner. It is a great question of legal morality, which, after all, is very sound morality. Webster, Wirt, Taney, (a man of fine talents, whom you have not probably heard of,) and Emmet, are the combatants, and a bevy of ladies are the promised and brilliant distributors of the prizes.

You will be tired of this gossip, and I should rejoice to have something better to write you. However, it is a consolation to me to write you, for my own sake; it is so delightful to recollect an old and tried friendship, which has weathered so many storms, and so many years. I cling to it with more affection the longer I live. Give my love (that is as much as any man chooses to give to his own wife from another) to your good wife, whose, as well as yours,

I am, most affectionately,

JOSEPH STORY.

TO J. EVELYN DENISON, ESQ., M. P.

Washington, March 15th, 1826.

MY DEAR SIR:

I have been in this city since January, attending the annual session of the Supreme Court. We have, as usual, been very diligently employed in business, and I am very sorry to add, that notwithstanding every exertion of ours, it is constantly



increasing upon us. A Bill has passed the House of Representatives to increase our number to ten, and it is very probable that it will receive the approbation of the Senate. It gave rise to one of the most vigorous and protracted debates which we have had this winter. Our friend Webster greatly distinguished himself on this occasion, and in the estimation of all competent judges, was *primus inter pares*.

The subject of the Panama Mission has been for a long time under the consideration of the Senate, upon a nomination made by the President of Ambassadors. This discussion has been with closed doors, but it was generally understood to have been very animated and sharp. It met with a very strong opposition, and was carried only last night at a very late hour (three o'clock) by a small majority. It was the first rallying-point made by those who are unfriendly to the Administration, and indicates their highest numerical strength, and perhaps somewhat more. The opposition, indeed, have their main reliance on the Senate, where the talents are at present decidedly in their favor. But there is very little doubt that most of the changes in that body, which will take place next year, will be favorable to the Administration. The House of Representatives forms a marked contrast in this respect. A majority, powerful in talents, numbers, and public confidence, aids the Administration in the most unequivocal manner, and you may depend that Mr. Webster is, and will continue to be, the leader. In a few days, the Panama Mission will come under discussion in the House of Representatives, and it will be made the test of party attachments, and probably fix their course for the term of Mr. Adams's Presidency. In point of fervor, and eloquence, and ability, it will probably equal any debate since the establishment of the Government. I shall endeavor to preserve a few of the best speeches for you, as I do not doubt they will develop our policy as to foreign nations generally, and as to South America in particular, in a striking manner.

You may probably hear rumors that the Cabinet is divided

by intestine discontents, but I can assure you that there is no foundation in fact for such rumors. The President and his Secretaries are in perfect harmony, and united in their course of policy. Mr. Clay has been in ill health during the whole winter, but he has now recovered, and has reassumed business with his wonted diligence and ability.

I believe I stated to you, in my former letter, that the opposition comes almost entirely from the slave-holding States, which were in favor of General Jackson, or Mr. Crawford, for President. The Western, Eastern, and Middle States, with the exception of Pennsylvania, are united in support of Mr. Adams. You may therefore easily judge how far he is likely to sustain himself in the Chair.

As usual, we have a great abundance of propositions to amend the Constitution, but none of them will succeed. They serve to employ the minds of some of our metaphysical statesmen, and popular debaters, and feed the curiosity of American speculators. Three weeks have been consumed on this subject already, and the debate has been able, somewhat pungent, and acrimonious. The discussions of such amendments is one of the safety-valves by which we let off some of our superabundant steam. Mr. Everett, whom you may remember at Boston, made his maiden speech on this occasion. It received very great applause from its manner as well as matter. He bids fair to be an eminent statesman, after having figured a considerable time as an eminent clergyman.

The winter throughout America has been very extraordinary. In general, its mildness has been unexampled, but we have had the other extreme of cold for a few days only, to the alarming degree of twenty, thirty, and even forty degrees below zero. Whether connected with this peculiarity of season I know not, but the influenza has travelled throughout the continent, and attacked three quarters of all the population. In some of our largest cities thirty thousand have been ill at the same time. The mortality has been considerable,

but not at all in proportion to the extent of the disease. I have been laboring under a severe attack, from which I am slowly recovering. . . .

In a few days I return home to recommence my circuit duties. I shall have a little leisure, however, before my task begins, and I shall devote it to reading the debates in Parliament and the last Law Reports. I wish your Judges could understand, that we read their decisions almost as fast as they make them.

I am, my dear sir, with the highest respect,  
Your obliged friend and servant,  
JOSEPH STORY.

TO HON. EDWARD EVERETT.

Salem, November 4th, 1826.

MY DEAR SIR:

I entirely agree with you respecting the Civil Law books to be placed in the Congress Library. It would be a sad dishonor of a national Library not to contain the works of Cujacius, Vinnius, Heineccius, Brissonius, Voet, &c. They are often useful for reference, and sometimes indispensable for a common lawyer. How could one be sure of some nice doctrines in the Civil Law of Louisiana without possessing and consulting them? What is to become of the laws of the Floridas without them?

I am ashamed to say that I have as yet found no opportunity to read carefully your Tract on our claims on France, Naples, and Holland. My time has been so entirely engrossed by writing opinions on cases that would not wait, that I have scarcely read at all for a month, on any subject but law. I shall read it at large with a particular reference to your additions, at my first moment of leisure. In the mean time I beg to say, that the nation is greatly indebted to you for this very satisfactory and clear view of our claims; and I, as one, feel roused to a strong sense of duty to our citizens, injured by the long, long neglect of their rights. I rejoice that you are



in the best sense becoming a public man, a man for the public.

Yours, very truly,

JOSEPH STORY.

TO C. S. TODD, ESQ.

Washington, March 2d, 1838.

MY DEAR SIR:

I sincerely thank you for the letters which you have so obligingly addressed to me. I entertained the most affectionate friendship for your father, and no one out of the circle of his family lamented his death more deeply or sincerely than myself. In him I lost a real friend, and I have learned but too dearly how impossible it is, at least at my time of life, to form new friendships which shall repay me for those which death has severed. The memory of your father is among those which I treasured up in my heart, as the first and best of human possessions. That I enjoyed his confidence is a source of the sweetest consolation to me; and although many years have passed away, his worth and his merits are constantly before me with all the freshness of the events of yesterday. I am truly glad for the memoir which you have written and transmitted to me. It is worthy of him and of you, and I shall send it to Mr. Peters, with a request that he will print it *verbatim*, with a few remarks, which are all that my constant engagements here would allow me to subjoin. . . .

A more extended memoir would not, perhaps, be suitable for the Reports; and if it were, still the early publication of the volume would not allow a memoir to be prepared which would add more extended reminiscences. I have been obliged to suppress some of my own personal feelings and reminiscences of your father's merits, lest they should seem to be mere dictates of private attachment. . . .

Pray allow me to call you by the name of friend, and

assure yourself that I shall be proud to acknowledge myself affectionately,

As the friend of yourself and family,

JOSEPH STORY.

The "few remarks" relating to Mr. Justice Todd, which were written by my father, are as follows:—

"Mr. Justice Todd possessed many qualities admirably fitted for the proper discharge of judicial functions. He had uncommon patience and candor in investigation; great clearness and sagacity of judgment; a cautious but steady energy; a well-balanced independence; a just respect for authority, and at the same time an unflinching adherence to his own deliberate opinions of the law. His modesty imparted a grace to an integrity and singleness of heart which won for him the general confidence of all who knew him. He was not ambitious of innovations upon the settled principles of the law; but was content with the more unostentatious character of walking in the trodden paths of jurisprudence; *super antiquas vias legis*. From his diffident and retiring habits, it required a long acquaintance with him justly to appreciate his juridical as well as his personal merits. His learning was of a useful and solid cast; not perhaps as various or as comprehensive as that of some men; but accurate, and transparent, and applicable to the daily purposes of the business of human life. In his knowledge of the local law of Kentucky, he was excelled by few; and his brethren drew largely upon his resources to administer that law, in the numerous cases which then crowded the docket of the Supreme Court from that judicial circuit. What he did not know, he never affected to possess; but sedulously sought to acquire. He was content to learn, without assuming to dogmatize. Hence he listened to arguments for the purpose of instruction, and securing examination; and not merely for that of confutation or debate. Among his associates he enjoyed an enviable



respect, which was constantly increasing as he became more familiarly known to them. His death was deemed by them a great public calamity; and in the memory of those who survived him, his name has ever been cherished with a warm and affectionate remembrance.

"No man ever clung to the Constitution of the United States with a more strong and resolute attachment. And in the grave cases which were agitated in the Supreme Court of the United States during his judicial life, he steadfastly supported the constitutional doctrines which Mr. Chief Justice Marshall promulgated, in the name of the Court. It is to his honor, and it should be spoken, that, though bred in a different political school from that of the Chief Justice, he never failed to sustain those great principles of constitutional law on which the security of the Union depends. He never gave up to party, what he thought belonged to the country.

"For some years before his death, he was sensible that his health was declining, and that he might soon leave the Bench, to whose true honor and support he had been so long and so zealously devoted. To one of his brethren who had the satisfaction of possessing his unreserved confidence, he often communicated his earnest hope that Mr. Justice Trimble might be his successor; and he bore a willing testimony to the extraordinary ability of that eminent Judge. It affords a striking proof of his sagacity and foresight; and the event fully justified the wisdom of his choice. Although Mr. Justice Trimble occupied his station on the bench of the Supreme Court, for a brief period only, yet he has left on the records of the Court enduring monuments of talents and learning fully adequate to all the exigencies of the judicial office. To both these distinguished men, under such circumstances, we may well apply the touching panegyric of the poet:

*Fortunati Ambo! —*

*Nulla Dies unquam memori vos eximet Ævo."*



Of the judgments delivered in 1826 by my father, those in "The Marianna Flora" were the most important. This case came before the Supreme Court on appeal from the District of Massachusetts, and my father delivered the opinion in both Courts. The facts of the case were very interesting, and are as follows: —

"On the morning of the 5th day of November, 1821, the United States schooner Alligator, whilst on a cruise to the coast of Africa, commanded by Lieutenant Stockton, fell in with a large vessel, apparently in distress, and which, when first perceived, was judged to be about nine miles from the Alligator; she was supposed, by the officers on board of the Alligator, to be in distress, from the circumstances of her lying to shortly after she was first perceived, and from her having apparently a flag hoisted half-mast high. Lieutenant Stockton made inquiries of the purser of his vessel as to the quantity of provisions on board, and said he would move towards her and see what she wanted, and the course of the Alligator was accordingly changed to the direction of the strange sail. When the Alligator had arrived within gunshot of the latter, a gun was fired from the latter, the shot of which fell at a considerable distance forward of the Alligator's bow. American colors, an ensign and pendant, were immediately hoisted on board of the Alligator. Another gun was very soon fired from the strange sail loaded with round and grape shot, upon which Lieutenant Stockton directed the bow gun of the Alligator to be fired as soon as it could be brought to bear, which was done; immediately after, another gun was fired from the strange sail and was returned by one or two of the cannonades of the Alligator, which fell short of the other vessel. No more guns were fired from the Alligator until she got within musket shot of the other vessel, when Lieutenant Stockton hailed her, which was only answered by another gun. Lieutenant Stockton then ordered a broad-

side to be fired, which was done, after which he got upon the arms-chest where his person and uniform could be seen, and waved his hat and trumpet to prevent further hostilities when two more guns were fired by the other vessel. After these were returned by several from the Alligator, the Portuguese flag was seen to be hoisted by the other vessel, upon which Lieutenant Stockton ordered the firing to cease, and again hailed, and called upon the other vessel to send its boat on board the Alligator. He was answered by another gun, but before this could be returned by the Alligator, Lieutenant Stockton had an opportunity of hailing several times more, and a boat came on board the Alligator with the mate of the other vessel and her papers and log-book. A boat was then despatched from the Alligator for the Captain, who was brought on board. In answer to inquiries made of him by Lieutenant Stockton, why he fired on the Alligator, bearing the flag of the United States, he replied in Portuguese, that he took her for a pirate, and his suspicions were strengthened because she did not affirm her flag; and he appealed to his papers to show that his vessel was a Portuguese merchantman. Lieutenant Stockton replied, that he did not understand the papers, but should send him to the United States for examination. Captain De Britto, the Portuguese master, protested against such a measure, and told Lieutenant Stockton that he should consider him answerable for damages. All on board the Marianna Flora were put in irons, except the captain and two boys. Provisions were put on board her from the Alligator. Lieutenant Abbot, of the Alligator, was appointed to take charge of her, and conduct her to the United States, and on the 7th day of November she left the Alligator, and proceeded on her way to the United States, according to orders from Lieutenant Stockton.

“It was satisfactorily proved by the evidence in the case, that the Marianna Flora was a Portuguese merchant ship, and was on her way from Bahia to Lisbon at the time of the capture.”



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This gave rise to a question of an entirely new character, as to the effect of a combat and capture through a mistake of both parties, and it is discussed in the opinions with great clearness and fulness. The decision in the Circuit Court, (which was affirmed,) was, that under the circumstances, the commander of the Alligator was not liable in costs and damages for seizing and bringing the Marianna Flora into a port of this country for judicial examination. The judgments delivered by my father are exceedingly interesting in their character, and will well reward the reading by any one. It is one of his most important opinions, and is distinguished by its sound practical judgment and clearheadedness.

During this year, he wrote for the North American Review an article upon Dane's Abridgment of American Law, in the course of which he notices all the abridgments of the Common Law, from that of Statham, in 1490, to Comyns's Digest, giving an account of their plan, their various excellencies and defects, as well as of the different editions. Of Comyns's Digest he speaks in terms of the highest commendation, and declares it as his opinion, that "for the purpose it proposes to accomplish, no plan could be more judicious, and no execution more singularly successful." To Mr. Dane's Abridgment he accords considerable, but by no means unqualified praise. But he is a gentle critic, and could not find it in his heart to pry too curiously into defects. This paper, in common with his other critical writings, shows complete familiarity with the books of the old Common Law, too many of which the more modern student knows only by hand, and generally by second-hand.

In August, 1826, he delivered the Annual Oration



before the Phi Beta Kappa Society of Harvard University. Here he stepped aside from the difficult acclivities of the Law, to dally in the pleasanter fields of Literature, and to breathe awhile the grateful fragrance of Poetry and Fiction. This performance is a glowing and elegant discourse upon the Literary Condition of the Age, written with eloquence, and full of genial sympathies. It shows that his severe legal training had not curdled his nature into crabbedness, nor rendered him hard and dogmatic. He was still ready to enjoy the flights of fancy, and had not become in the least literal. Gracefully he turns from dry professional studies to poetry and literature, which, as they were his earliest love, were also the friends of his matured powers, in whose society he cheered the intervals of toil and alleviated the moments of sorrow. The following passage is peculiarly characteristic, as exhibiting the high estimate he had of the powers, character, and influence of woman. Throughout life, he was their champion, and here he couches a lance in their defence.

“Nor should it be overlooked, what a beneficial impulse has been thus communicated to education among the female sex. If Christianity may be said to have given a permanent elevation to woman, as an intellectual and moral being, it is as true, that the present age, above all others, has given play to her genius, and taught us to reverence its influence. It was the fashion of other times to treat the literary acquirements of the sex, as starched pedantry, or vain pretensions; to stigmatize them as inconsistent with those domestic affections and virtues, which constitute the charm of society. We had abundant homilies read upon their amiable weaknesses and sentimental delicacy, upon their timid gentleness

and submissive dependence; as if to taste the fruit of knowledge were a deadly sin, and ignorance were the sole guardian of innocence. Their whole lives were 'sicklied o'er with the pale cast of thought;' and concealment of intellectual power was often resorted to, to escape the dangerous imputation of masculine strength. In the higher walks of life, the satirist was not without color for the suggestion, that it was

"A youth of folly, an old age of cards;"

and that elsewhere, 'most women had no character at all,' beyond that of purity and devotion to their families. Admirable as are these qualities, it seemed an abuse of the gifts of Providence to deny to mothers the power of instructing their children, to wives the privilege of sharing the intellectual pursuits of their husbands, to sisters and daughters the delight of ministering knowledge in the fireside circle, to youth and beauty the charm of refined sense, to age and infirmity the consolation of studies, which elevate the soul and gladden the listless hours of despondency.

"These things have in a great measure passed away. The prejudices, which dishonored the sex, have yielded to the influence of truth. By slow but sure advances, education has extended itself through all ranks of female society. There is no longer any dread, lest the culture of science should foster that masculine boldness or restless independence, which alarms by its sallies, or wounds by its inconsistencies. We have seen, that here, as everywhere else, knowledge is favorable to human virtue and human happiness; that the refinement of literature adds lustre to the devotion of piety; that true learning, like true taste, is modest and unostentatious; that grace of manners receives a higher polish from the discipline of the schools; that cultivated genius sheds a cheering light over domestic duties, and its very sparkles, like those of the diamond, attest at once its power and its purity. There is not a rank of female society,



however high, which does not now pay homage to literature, or that would not blush even at the suspicion of that ignorance, which a half century ago was neither uncommon nor discreditable. There is not a parent, whose pride may not glow at the thought, that his daughter's happiness is in a great measure within her own command, whether she keeps the cool sequestered vale of life, or visits the busy walks of fashion.

"A new path is thus open for female exertion, to alleviate the pressure of misfortune, without any supposed sacrifice of dignity or modesty. Man no longer aspires to an exclusive dominion in authorship. He has rivals or allies in almost every department of knowledge; and they are to be found among those, whose elegance of manners and blamelessness of life command his respect, as much as their talents excite his admiration. Who is there, that does not contemplate with enthusiasm the precious Fragments of Elizabeth Smith, the venerable learning of Elizabeth Carter, the elevated piety of Hannah More, the persuasive sense of Mrs. Barbauld, the elegant Memoirs of her accomplished niece, the bewitching fictions of Madame D'Arblay, the vivid, picturesque, and terrific imagery of Mrs. Radcliffe, the glowing poetry of Mrs. Hemans, the matchless wit, the inexhaustible conversations, the fine character painting, the practical instructions of Miss Edgeworth, *the great known*, standing, in her own department, by the side of *the great unknown*?"

The following letter from Chief Justice Marshall, is in allusion to this passage.

TO HON. JUDGE STORY.

Richmond, November 26th, 1826.

MY DEAR SIR:

I have deferred thanking you for the copy of your Discourse before the Society of Phi Beta Kappa, until there was some probability that my letter might find you at Salem. . . .



But it is time to return to your discourse. I have read it with real pleasure, and am particularly gratified with your eulogy on the ladies. It is matter of great satisfaction to me to find another Judge, who, though not as old as myself, thinks justly of the fair sex, and commits his sentiments to print. I was a little mortified, however, to find that you had not admitted the name of Miss Austen into your list of favorites. I had just finished reading her novels when I received your discourse, and was so much pleased with them that I looked in it for her name, and was rather disappointed at not finding it. Her flights are not lofty, she does not soar on eagle's wings, but she is pleasing, interesting, equable, and yet amusing. I count on your making some apology for this omission. . . .

Farewell. With esteem and affection,

I am yours,

J. MARSHALL.

It is due to my father to say, that he fully recognized the admirable genius of Miss Austen. Scarcely a year passed that he did not read more than one of them, and with an interest which never flagged. I well remember, in the year 1842, while I was engaged in finishing a bust of him in marble, for which he gave me several sittings, that "Emma" was read aloud at his request to beguile the time. With what relish he listened, his face lighting up with pleasure, and interrupting my sister continually to comment on the naturalness and vivacity of the dialogue, or the delicate discrimination of character,—to express his admiration of the author's unrivalled power of exciting and sustaining interest in groups of common and prosaic persons, merely through her truth and felicity of delineation,—and to draw parallels between the characters in the novel, and persons of

our acquaintance. I cannot but recall those happy days, when he gave up to me a part of his study as a studio, and was so interested in my work, that he constantly framed excuses to return so as to watch its progress, and had an itching in his fingers to handle the file and chisel himself. Our little family group was then enlarged by the addition of Emma, Mr. Knightley, Mr. Woodhouse and Miss Bates, who almost became real persons to us, as we read. But the ludicrous impatience with which my father always greeted the entry of Miss Bates, plainly showed that she was a fiction, for had she had an actual existence, he would have been sure to receive her with patience and kindness.

A letter from Chancellor Kent gives his views of this oration.

TO HON. JOSEPH STORY.

New York, October 2d, 1826.

MY DEAR SIR:

Permit me to return you my thanks for your Phi Beta Kappa Oration. It is one of the most finished and splendid productions of the kind I ever read, for just thought, varied information, refined taste, brilliant imagination, and elegant and eloquent language.

Be assured you have every title to the respect, admiration, and affection of your sincere friend,

JAMES KENT.

In the course of a vindication of the value of classical studies occur the following passages:

"The importance of classical learning to professional education is so obvious, that the surprise is, that it could ever have become matter of disputation. I speak not of its



power in refining the taste, in disciplining the judgment, in invigorating the understanding, or in warming the heart with elevated sentiments; but of its power of direct, positive, necessary instruction. Until the eighteenth century, the mass of science, in its principal branches, was deposited in the dead languages, and much of it still reposes there. To be ignorant of these languages is to shut out the lights of former times, or to examine them only through the glimmerings of inadequate translations. What should we say of the jurist, who never aspired to learn the maxims of law and equity, which adorn the Roman codes? What of the physician, who could deliberately surrender all the knowledge heaped up for so many centuries in the Latinity of continental Europe? What of the minister of religion, who should choose not to study the Scriptures in the original tongue, and should be content to trust his faith and his hopes, for time and for eternity, to the dimness of translations, which may reflect the literal import, but rarely can reflect with unbroken force the beautiful spirit of the text? Shall he, whose vocation it is 'to allure to brighter worlds, and lead the way,' be himself the blind leader of the blind? Shall he follow the commentaries of fallible man, instead of gathering the true sense from the Gospels themselves? Shall he venture upon the exposition of divine truths, whose studies have never aimed at the first principles of interpretation? Shall he proclaim the doctrines of salvation, who knows not, and cares not, whether he preaches an idle gloss, or the genuine text of revelation? If a theologian may not pass his life in collating the various readings, he may, and ought to aspire to that criticism, which illustrates religion by all the resources of human learning; which studies the manners and institutions of the age and country, in which Christianity was first promulgated; which kindles an enthusiasm for its precepts by familiarity with the persuasive language of Him, who poured out his blessings on the Mount, and of him, at whose impressive appeal Felix trembled.



"I pass over all consideration of the written treasures of antiquity, which have survived the wreck of empires and dynasties, of monumental trophies and triumphal arches, of palaces of princes and temples of the gods. I pass over all consideration of those admired compositions, in which wisdom speaks, as with a voice from heaven; of those sublime efforts of poetical genius, which still freshen, as they pass from age to age, in undying vigor; of those finished histories, which still enlighten and instruct governments in their duty and their destiny; of those matchless orations, which roused nations to arms, and chained senates to the chariot wheels of all-conquering eloquence. These all may now be read in our vernacular tongue. Ay, as one remembers the face of a dead friend by gathering up the broken fragments of his image—as one listens to the tale of a dream twice told—as one catches the roar of the ocean in the ripple of a rivulet—as one sees the blaze of noon in the first glimmer of twilight.

"There is one objection, however, on which I would for a moment dwell, because it has a commanding influence over many minds, and is clothed with a specious importance. It is often said, that there have been eminent men and eminent writers, to whom the ancient languages were unknown; men, who have risen by the force of their talents, and writers, who have written with a purity and ease, which hold them up as models for imitation. On the other hand, it is as often said, that scholars do not always compose either with elegance or chasteness; that their diction is sometimes loose and harsh, and sometimes ponderous and affected. Be it so. I am not disposed to call in question the accuracy of either statement. But I would nevertheless say, that the presence of classical learning was not the cause of the faults of the one class, nor the absence of it the cause of the excellence of the other. And I would put this fact, as an answer to all such reasonings, that there is not a single language of modern Europe, in which literature has made any considerable

advances, which is not directly of Roman origin, or has not incorporated into its very structure many, very many, of the idioms and peculiarities of the ancient tongues. The English language affords a strong illustration of the truth of this remark. It abounds with words and meanings drawn from classical sources. Innumerable phrases retain the symmetry of their ancient dress. Innumerable expressions have received their vivid tints from the beautiful dyes of Roman and Grecian roots. If scholars, therefore, do not write our language with ease, or purity, or elegance, the cause must lie somewhat deeper than a conjectural ignorance of its true diction.

“ But I am prepared to yield still more to the force of the objection. I do not deny, that a language may be built up without the aid of any foreign materials, and be at once flexible for speech and graceful for composition; that the literature of a nation may be splendid and instructive, full of interest and beauty in thought and in diction, which has no kindred with classical learning; that in the vast stream of time it may run its own current unstained by the admixture of surrounding languages; that it may realize the ancient fable, ‘*Doris amara suam non intermisceat undam* ;’ that it may retain its own flavor, and its own bitter saltness too. But I do deny, that such a national literature does in fact exist in modern Europe, in that community of nations of which we form a part, and to whose fortunes and pursuits in literature and arts we are bound by all our habits, and feelings, and interests. There is not a single nation, from the North to the South of Europe, from the bleak shores of the Baltic to the bright plains of immortal Italy, whose literature is not embedded in the very elements of classical learning. The literature of England is, in an emphatic sense, the production of her scholars; of men, who have cultivated letters in her universities, and colleges, and grammar schools; of men, who thought any life too short, chiefly, because it left some relic of antiquity unmastered, and any other fame



humble, because it faded in the presence of Roman and Grecian genius. He, who studies English literature without the lights of classical learning, loses half the charms of its sentiments and style, of its force and feelings, of its delicate touches, of its delightful allusions, of its illustrative associations. Who, that reads the poetry of Gray, does not feel, that it is the refinement of classical taste, which gives such inexpressible vividness and transparency to his diction? Who, that reads the concentrated sense and melodious versification of Dryden and Pope, does not perceive in them the disciples of the old school, whose genius was inflamed by the heroic verse, the terse satire, and the playful wit of antiquity? Who, that meditates over the strains of Milton, does not feel, that he drank deep at

‘Siloa’s brook that flowed  
Fast by the oracle of God’ —

that the fires of his magnificent mind were lighted by coals from ancient altars?”

The following letter, written from Washington during the session of 1827, expresses some religious views:—

REV. MR. BRAZER.

Washington, February 4th, 1827.

MY DEAR SIR:

I was much gratified by the receipt of your letter of the 30th of January this morning. I complain of one thing, however, seriously, and that is, that you should pay the postage, because that belongs only to matters of business and not of friendship, and by way of retaliation, I am almost determined to oblige you to the double penalty of paying the postage of this. I shall always esteem your letters as favors to me, and cannot consent that they should be at your cost.

I have read Dr. Channing’s sermon (for a copy of which I



am obliged to you) with very great satisfaction. You have characterized it in terms which are in perfect accordance with my views. It is bold, decisive, eloquent, and full of fine illustrations. It cannot fail to do much good. I dare say, it will add much to his fame as a leader, and the frankness with which it avows and maintains Unitarianism, commands my reverence. But I cannot but remember others who have labored to produce the same results, and have had to contend with dangers and difficulties; who have undergone toil and turmoil, and encountered cold indifference, and often open censure, for adopting the same lofty and appropriate course in other days. I cannot forget that more than six years ago, *you*, when silence and caution, and timid reserve were in fashion, came out with a bold and determined voice, and firmly, yet temperately, proclaimed the same opinions. You did this when it was no passport to favor; when many of your own congregation were hesitating; when the weak and the timid held back, and the fear of offence was deemed a more engaging virtue, than steady and uncompromising devotion to mere truth, naked, Christian truth. I remember your labors at that time, and on those occasions, and I shall not be brought easily to forget them. I cannot but feel that those who have labored in the vineyard the whole day, are worthy of their hire, ay, and more to be thought of than those, however deserving, who come in at the eleventh hour. I rejoice at what Dr. Channing has done; it is a noble work, and suits well with the character of a mature and elevated clergyman. But I remember that he was not the first in the race.

I dare say you may smile at what I have written, but the subject has unintentionally come over me, and I have been led to some reflections which may admonish me not to do injustice to others, while I do justice to him. It is a sad sin sometimes to forget. . . .

I pass with pleasure from this dull topic to say a few words on others more engaging to both of us. The Rev. Mr.

Walker preached in Mr. Little's Church a fortnight ago, and gave us in the forenoon (for I did not hear him in the afternoon) one of his strong, downright, forcible sermons. Its object was to show that reason and revelation are not independent and disconnected, but necessarily, connected, and dependent sources of religious knowledge; that revelation could not exist without reason, nor reason without revelation. His manner of treating the subject was striking and stirring, but it was somewhat startling to timid minds; and though he dealt with powerful truths, the manner, to weak brethren, would be deemed somewhat uncompromising and harsh. I was myself much pleased, though a little more suavity would probably have made it more generally engaging. The President attended, and indeed he generally attends this church; but it is sad to see, in so large a city, so thin a congregation; and those who attend, principally visitors from New England. . . .

You may probably wish to know what is doing in this great practical world. It is difficult to speak on the subject without being vague and desultory. This is the short session of Congress, and little is usually done; but less than usual will now be done, because men's thoughts are intent on subjects which do not enter into the public debates. The truth is, that the next election for the Presidency is the absorbing topic, and it is truly distressing to see how much of legislation takes its color from this ingredient. I confess it is a source of melancholy and grave reflection to me, not on account of the success or failure of any candidate, but on account of the future destiny of the country itself. I have my fears, that in the future progress of this country, this will always be a subject of contest every few years, and that of course all the intermediate periods will be passed in efforts and excitements to defeat or aid particular candidates. A more distressing state of things could hardly occur in any republic, and least of all, in a federative republic. If this prophesy should



unhappily become fact, it will necessarily give rise to the most bitter and permanent local factions with which the country could be scourged; and it will be very difficult for any administration to maintain itself, unless by sacrifices and artifices, which will corrupt and debase the public councils. The very thought makes me at times exceedingly gloomy, and convinces me more and more, that the Presidency is the ticklish part of our constitution. Perhaps it will prove its overthrow.

The bankrupt bill has been lost, and under circumstances which will forbid any attempt to revive it for many years. It has had much of the best talent, eloquence, and influence of the Senate to support it; but it has failed from causes not likely to be overcome in future times. It interferes with State policy, pride, and prejudice; with the interests of some, with the political expectations of others; with the anti-federalism of others; and, above all, with that mass of public opinion, which in different States of the Union floats in opposite directions, even when apparently impelled by the same common cause. I have always had some confidence that a bankrupt law would be passed, but I now begin to believe that the power will, in the National Government, forever remain a dead letter.

Of other business before Congress, little I imagine will be done, except to pass the common appropriation bills. The bill respecting the colonial trade, which is soon to be under discussion, will meet much opposition, as I conjecture. It is thought to be of the last importance in our negotiations with Great Britain. The woolen duty bill is a very exciting subject, and enlists many warm friends and foes. I begin to believe that it may pass, though it will be singed in its progress through the fiery trial. . . .

I have sat up very late, that I might write you this letter, lest I should not very soon have another opportunity, as the Court are now getting deep into business. You must



give me credit, therefore, for my diligence, as a proof of the pleasure I have received from your letter.

Good night, and may God bless you.

I am, affectionately, yours,

JOSEPH STORY.

The following letters, written at the same time, express incidentally some of his religious views and feelings, and show how much higher value he set upon works than creeds.

TO MRS. JOSEPH STORY.

Washington, February 2nd, 1827.

MY DEAR WIFE:

. . . I must tell you a little anecdote which was brought to my knowledge the other day. In the house where we board, (Mrs. Rapine's,) there is a negro servant whose name is Robert. He was born in Jamaica, a free black, and has now in Alexandria a wife and eight children, having been married about seven or eight years. He seems very good, natural, and unobtrusive. The other evening he came to ask my advice, and told me the following story. While he was at sea and his wife was confined with her first child, an infant white child was brought to his house by an utter stranger, with a request that his wife would take care of the infant, and nurse it for a few days until it should be called for. The stranger departed, and no one has ever since appeared to claim the child. The natural conclusion is, that it is a foundling, and is deserted. He says she is a fine little girl, now seven years old, and he is anxious that she should be brought up with good morals and good education, and that she should not remain an inmate with blacks, so as to become an outcast, and in their condition. All this he told me in an artless and unpretending way, and desired to know if I could suggest any mode except putting the child to a low

and menial service, by which she could be taken care of. He says he has never received any pay of any person; that he and his wife love the child exceedingly, and he wishes, if practicable, to have her put under the care of the Quakers, at Philadelphia. Now if this simple narrative strikes your mind as it does mine, you must be affected by the kindness, humanity, and even delicacy of a poor negro to an unfortunate female, not to degrade, but to preserve her. Such conduct is worth a million of sermons, and missions, and godly theses. It is downright, practical, native virtue, worth all the doctrinal piety and sectarian zeal of all Christendom. . . .

Yours, very affectionately,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, February 23d, 1827.

MY DEAR WIFE:

. . . Your account of Mr. Pierpont's discourse is very gratifying to me. I always thought him a man of real talents; somewhat too imaginative, but very decided, and full of a liberal spirit. His manner has a little affectation about it, and often betrays one into a slight impatience. But his genius rarely deserts him in his public duties. It is wonderful what great improvements have been made in the style of pulpit performances, since ministers have dared to think and speak for themselves, and expound truths with a clear and manly frankness. I hope the time is fast passing away in which cant and formal observances will be easy substitutes for real unaffected piety, and above all, for religious charity. . . .

Most truly and affectionately yours,

JOSEPH STORY.

TO MRS. SARAH WALDO STORY.

Washington, March 8th, 1827.

MY DEAR WIFE:

. . . I see by the last newspapers that Governor Gore is dead. I regret it exceedingly, for he was a most worthy man, a real gentleman, and an accomplished statesman. From my earliest acquaintance with him, when I was a young man in the Massachusetts Legislature, he always treated me with the greatest kindness and with no common share of distinction. Such kindness was to me rare and valuable at that period, amidst political contentions, and I have never forgotten it. I believe your father always entertained a high opinion of him, for he has often said to me, "Kit Gore is a clever fellow;" and this from him is rare praise.

We have the famous Mrs. Royall here, with her new novel, the "Tennessean," which she has compelled the Chief Justice and myself to buy, to avoid a worse castigation. I shall bring it home for your edification.

I have bought each of the children a book, but I was sadly puzzled in the choice, not finding any which exactly suited my taste. I have bought them because I could find no better. I think Louisa's is a very good book for her, and I am sure it will quite delight her, for it is bound.

Give my love to all the household of the faithful, and believe me most truly and affectionately your husband,

JOSEPH STORY.

TO MRS. SARAH WALDO STORY.

Washington, March 12th, 1827.

MY DEAR WIFE:

. . . Your account of Mrs. P.'s illness and death is quite interesting. I have sometimes thought it a great blessing to have so circumscribed a mind as to believe all



that we are told, and to fear nothing, and doubt nothing. It is, however, the enviable lot of few but enthusiasts and bigots. And I have sometimes said with Gray,—

“No more,—where ignorance is bliss  
’T is folly to be wise.”

After all, however, there is probably much more of real happiness in that enlightened wisdom, which learns to trust in God, because He is good and merciful and kind, and above all, because He is our Father in heaven. It seems to me that this paternal character, rightly understood, ought to be the source of the highest consolation to all persons, throughout all life and in the hour of death. Whether we meet death with tranquillity or dread does not appear to depend so much upon faith or opinion as upon temperament. The sensibility of some persons quite overrules them, however virtuous they may be; the physical firmness of others tranquillizes them, however profligate they may be. . . .

Your affectionate husband,

JOSEPH STORY.

Of the cases decided by the Supreme Court during this session, that of *Bank of the United States v. Dandridge*, (12 Wheat. R.) breaking down the artificial distinction between presumptions of law arising from the acts of individuals and of corporations, is the most important. The suit was brought by the Bank upon a bond by one of the cashiers for the faithful performance of his duties, which had not been formally approved by record of the Bank, and the question was, whether the fact of approval could be shown by presumptive evidence. It was held, that it could,—the presumption, as to the public appointment and powers of persons acting publicly as officers of a corporation being the same as if

they acted for private persons, unless such presumption be in contravention of the express requisition of the charter. This case opens much of the law relating to corporations, and is a leading one on the subject.

During this year, the illness of some of his family, and the death of his sister, Mrs. Stephen White, to whom he was warmly attached, cast a gloom over his mind. The Christian spirit with which he met this affliction appears in a letter written shortly after her death to his friend, Mr. Justice Washington.

TO MR. JUSTICE WASHINGTON.

Salem, July 4th, 1827.

MY DEAR SIR:

Before I advert to the contents of your late interesting letters, I must explain to you why I have not answered them at an earlier period. My circuit has but recently been finished. And just after its close I had the misfortune to have sickness in my own family, and also to lose a married sister by a consumption. My time has been occupied much by these cares and distresses, and my heart been very heavy. My sister was an interesting and lovely woman, one of the most perfect and engaging I have ever known, and she died at the period, in which, to human eyes, her existence seemed very important to her children and family. Such are the ways of Providence, and having, as I always have had, the most unwavering confidence in the goodness, unchangeable mercy, and omniscience of God, I bow to the calamity, and believe it for the best ultimate good of us all. If Christianity had done nothing more than to reveal the paternal character of God, that alone would render it inestimable. How bright are the hopes it holds out of a blessed immortality. God bless and preserve you, and believe me most affectionately,

Your friend,

JOSEPH STORY.

In all his sorrows he found consolation in committing his thoughts and feelings to verse. The following Poem was the fruit of some leisure hour at this time.

#### REFLECTIONS ON LIFE.

Say, what is human life? how full of change!  
 Sunshine and clouds, and showers, and smiles, and tears,  
 Still onward in its paths where'er we range,  
 Hopes spring to-day — to-morrow sickening fears.  
 The enchanting cup is dashed from pleasure's lip;  
 The prize of Glory mocks Ambition's toil;  
 E'en while its sweetest draught the thirsty sip,  
 The bitter dregs its mantling flavor spoil,  
 Yet oft the brightest eve succeeds the storm's turmoil.

Nor Mind, nor Rank escapes the common doom; —  
 Youth feels the withering touch of slow disease;  
 Oft Beauty's triumph sparkles near the tomb,  
 And Genius droops in ruins. Yet on these  
 In contrast strong, the setting sun of Age  
 Oft shines with mellow lustre, cheerful, free;  
 And Sorrow poring o'er her blotted page,  
 Dreams of new bliss; Care wakes to ecstasy;  
 Night is not darkness all. Stars gem her silent sea.

Mourn not these changes. Such is Heaven's decree,  
 And Wisdom framed it; man without were nought.  
 Here virtues ripen for eternity,  
 And mightier swells the soul, instinct with thought.  
 Say, what were Love without a hope or fear?  
 And Friendship ne'er confiding nor betrayed?  
 And Honor sure to hold its bright career?  
 Fame without toil, — or sunshine without shade?  
 What fruits, when flowers ne'er bloom, nor blossoms fade?

Yes, all we are, and all we can be, spring  
 From sense of good or sympathy for woe.  
 To human suffering all their kindness bring;  
 For each has felt, or each may feel the blow.  
 Joy spreads its witcheries round; heart kindles heart;  
 For home, for country, die the generous brave;  
 Affection soothes the wounds, which baffles art;  
 And life is nobly risked to sink or save;  
 Earth but prepares for heaven, whose portal is the grave.



During this year my father wrote, for the January number of the *North American Review*, an article on the Life and Services of Chief Justice Marshall, which he afterwards, in 1833, elaborated and enlarged for the National Portrait Gallery, where it was printed, and at a still later date used as the basis of a discourse which he pronounced on the death of that distinguished Judge. After reviewing the principal events of his life, he proceeds to speak of the chasm which his death would make, and in this connection he says,—

“When can we expect to be permitted to behold again so much moderation united with so much firmness, so much sagacity with so much modesty, so much learning with so much experience, so much solid wisdom with so much purity, so much of every thing, to love and admire, with nothing, absolutely nothing, to regret? What, indeed, strikes us as the most remarkable in his whole character, even more than his splendid talents, is the entire consistency of his public life and principles. There is nothing in either which calls for apology or concealment. Ambition has never seduced him from his principles, nor popular clamor deterred him from the strict performance of duty. Amid the extravagances of party spirit, he has stood with a calm and steady inflexibility; neither bending to the pressure of adversity, nor bounding with the elasticity of success. He has lived, as such a man should live, (and yet, how few deserve the commendation!) by and with his principles. Whatever changes of opinion have occurred, in the course of his long life, have been gradual and slow; the results of genius acting upon larger materials, and of judgment matured by the lessons of experience. If we were tempted to say, in one word, what it was, in which he chiefly excelled other men, we should say, in wisdom; in the union of that virtue, which has ripened under the hardy discipline of principles, with that knowledge,

which has constantly sifted and refined its old treasures, and as constantly gathered new. The constitution, since its adoption, owes more to him than to any other single mind, for its true interpretation and vindication. Whether it lives or perishes, his exposition of its principles will be an enduring monument to his fame, as long as solid reasoning, profound analysis, and sober views of government, shall invite the leisure, or command the attention of statesmen and jurists.

"But, interesting as it is to contemplate such a man in his public character and official functions, there are those, who dwell with far more delight upon his private and domestic qualities. There are few great men, to whom one is brought near, however dazzling may be their talents or actions, who are not thereby painfully diminished in the estimate of those who approach them. The mist of distance sometimes gives a looming size to their character; but more often conceals its defects. To be amiable, as well as great; to be kind, gentle, simple, modest, and social, and at the same time to possess the rarest endowments of mind, and the warmest affections, — is a union of qualities, which the fancy may fondly portray, but the sober realities of life rarely establish. Yet it may be affirmed by those who have had the privilege of intimacy with Mr. Chief Justice Marshall, that he rises, rather than falls, with the nearest survey; and that in the domestic circle he is exactly what a wife, a child, a brother, and a friend would most desire. In that magical circle, admiration of his talents is forgotten, in the indulgence of those affections and sensibilities, which are awakened only to be gratified. More might be said with truth, if we were not admonished, that he is yet living, and his delicacy might be wounded by any attempt to fill up the outline of his more private life."

Of this Eulogy upon Marshall, how truly may it be said of my father, "*Mutato nomine de te fabula narratur.*" Such praise would only be simple justice to him. The

nearer to view him and the more intimately to know him, was the more clearly to reverence him; for he had that rare union of greatness and goodness, of wisdom and simplicity, which commands at once respect and affection. No one who ever knew him intimately failed to love him. His was the buoyancy, naturalness, and unconsciousness of a child, joined to the vigor, earnestness, and concentrated power of the man.



## CHAPTER XV.

### JUDICIAL LIFE.

PREPARES AN EDITION OF THE LAWS OF THE UNITED STATES — LETTER IN ACKNOWLEDGMENT OF THE SECOND VOLUME OF KENT'S COMMENTARIES — THIRD VOLUME OF MASON'S REPORTS — CASE OF PEELE v. MERCHANTS INSURANCE COMPANY — BURNING OF THE MANUSCRIPT OF THIS VOLUME — RE-Writes it — IS OFFERED THE ROYALL PROFESSORSHIP OF LAW AT CAMBRIDGE — DECLINES IT — LETTERS — THE PLEASURE HE TOOK IN READING NEWSPAPERS — SCRUPULOUSNESS IN VOTING — DEATH OF JUDGE PETERS — DEATH OF MR. JUSTICE TRIMBLE — SKETCH OF HIM — DELIVERS THE CENTENNIAL DISCOURSE ON THE ANNIVERSARY OF THE SETTLEMENT OF SALEM — EXTRACTS FROM IT — HIS RELIGIOUS TOLERATION — SKETCH OF LADY ARBELLA JOHNSON — CORRESPONDENCE WITH LORD STOWELL ON THE CASE OF THE SLAVE GRACE — LETTERS — INAUGURATION AND SPEECH OF GENERAL JACKSON — ELECTION OF HON. JOSIAH QUINCY AS PRESIDENT OF HARVARD UNIVERSITY — SKETCH OF MR. JUSTICE WASHINGTON — SKETCH OF MR. EMMET — PREPARES A NEW EDITION OF ABBOTT ON SHIPPING — LETTER OF MR. JUSTICE VAUGHAN IN RELATION TO IT — CORRESPONDENCE WITH HON. JOHN QUINCY ADAMS — GENERAL REVIEW OF HIS CHARACTER AND POSITION — IS CALLED TO THE DANE PROFESSORSHIP IN HARVARD UNIVERSITY.

DURING the year 1827, my father prepared and superintended the publication of the edition of the Laws of the United States, in three volumes, which bears his name. The previous collections had only contained those actually in force; but this work embraces all the Laws, whether then in force or repealed, except such as were of a purely private or temporary nature, and such

as exclusively relate to the District of Columbia. All the acts are newly numbered and arranged, and the typographical errors are carefully corrected. My father, in the performance of this task, is considered to have shown much judiciousness, and this edition has been for a long time a standard text of reference. The reasons which prompted him to retain the repealed laws, are thus stated in the preface :—

“ It is often a subject of complaint, among professional and other gentlemen, that the common editions embrace those laws only which are actually in force at the time of the publication, and are thus attended with much embarrassment and inconvenience. Many of the existing laws are very forcibly illustrated by the provisions of prior repealed laws on the same subject; and many have tacit reference to the latter, which are not easily detected in a cursory perusal. In few cases, when legislation has, at successive periods, acted on the same matter, can any lawyer, who is solicitous to discharge his duty in public argument or in private consultation, feel safe in omitting to examine the whole series of the laws, even though many of them are repealed or expired. And instances are not unfrequent of successful argument founded solely on the coincidences of difference between the revised and the original laws. The history of our jurisprudence, also, whether examined as matter of curiosity or private interest, whether searched with reference to public policy or to legal rights, is so intimately interwoven with the whole course of our legislation, that no liberal inquirer, and least of all, a publicist, a jurist, or a statesman, can dispense with an accurate chronological knowledge of the subject. The Statutes at Large, embracing a great mass of private statutes, have already become very unwieldy, voluminous, and expensive. It is believed, therefore, that a work like the present,

which detaches and embraces all those which are not exclusively of a fugitive or private character, cannot fail to be of general convenience and utility.

"To these volumes a copious verbal index has been annexed, so as to make the facility of reference as complete as possible."

During this year, 1827, the second volume of Chancellor Kent's Commentaries was published, and this generous letter is in acknowledgment of a copy sent to my father by the author.

TO HON. JAMES KENT.

Salem, December 15th, 1827.

DEAR SIR:

I have to render you many thanks for the copy of the second volume of your Commentaries, which you have so obligingly sent to me. It arrived a few days ago, and though I am, and have been much engaged in judicial labors, I have found time to devote a few hours to it, at once to gratify my curiosity, and to slake my thirst for knowledge at a head spring. The work is but a new proof of your accurate learning, extensive research, and unwearied diligence. It does honor to your talents and public spirit, and I am persuaded that it will give a permanent increase to your reputation. It will become an American text-book, and range on the same shelf with the classical work of Blackstone in all our libraries. If one were tempted to envy you any thing, it would be this proud distinction. To show you that I speak not at random, I have had occasion to read through your whole chapter as to the relation of husband and wife, and particularly what respects her power over her separate property, to hold as well as to dispose of it, on account of a very interesting case, recently argued before me, upon the effect of post-nuptial settlements to a large amount. I was happy to find that we



had read the authorities alike, and stood upon the same conclusions. In the opinion which I shall soon deliver, I shall rely upon your Commentaries with emphasis.

Mr. Mason's third volume is just published, and will issue from the press in a few days. I shall send you a copy as soon as I can obtain one, and must ask you to read it with an indulgent eye. I do not choose that you should imagine that I have not read what you have been pleased to say in the close of your volume, as to Mr. Gallison's and Mr. Mason's Reports. I am proud of the compliment, and wish with all my heart I had a better title to deserve it. I am content, however, — "*laudatus a laudato viro.*"

With the highest respect and esteem,

Your obliged friend,

JOSEPH STORY.

The third volume of Mr. Mason's Reports, spoken of in this letter, was printed in 1827 and contains the judgments of my father in the Circuit Court between the May Term, 1821, and the October Term, 1825, at Portland. The principal cases contained in this volume, are, *The Marianna Flora*, which has been before spoken of, and *Peele v. The Merchants Insurance Company*, (p. 27,) in which he delivered one of his most learned and elaborate judgments on the law of Insurance. The marginal note to this last case, states shortly the circumstances, and the points decided. It is as follows:—

"Policy on ship *Argonaut* and cargo at and from Leghorn to her port of discharge in the United States. Ship sailed on her voyage being owned and bound to Salem. She was cast away, in March, 1820, on a ledge of rocks near Portsmouth harbor, (New Hampshire,) and immediately bilged. She was in such a desperate situation, that it was nine

chances out of ten that she would be totally lost and wrecked in twenty-four hours. In this situation the owners abandoned to the underwriters. There was no verbal acceptance of the abandonment, but the underwriters declined any further agency of the owners, sent their own agent to take possession of the vessel, sell her if he deemed best, and act as he chose in all respects as to the vessel; but directing the agent not to meddle with the cargo, (specie,) which had not been abandoned. The owners never meddled with the ship after the abandonment; but the agent of the underwriters took exclusive possession, and by most extraordinary good fortune and good weather she was gotten off and carried to Portsmouth in about a week. She was injured to about one half her value, and the necessary repairs could not be made in a period short of three months, which was a longer period than the usual length of the voyage insured. After the vessel was got off, the underwriters offered to return her to the owners. They refused to receive her. The underwriters then repaired her in three months under their own agent, and when repaired offered her again to the owners. The latter again refused to receive her; and never authorized the repairs in any shape. They adhered to their abandonment as good, and that henceforth they had nothing to do with the ship.

“The Court held, First, that the owners had a good right to abandon under the circumstances, even if the injury was less than one half the value. Secondly, that in estimating that half value, there was not to be a deduction of one third, new for old, as in case of partial loss; that the half value, which authorized an abandonment, was half the sum which the ship, if repaired, would be worth, after repairs made. If the ship when repaired would not be worth double the amount of the repairs, the owners had a right to abandon. Thirdly, that the underwriters had no right to take possession of the ship, either to move her or to repair her, without the consent of the owners. That these acts of taking pos-

session, &c. after the abandonment, were, in point of law, an acceptance of the abandonment, since the underwriters could not be justified in them, except as owners of the property. Fourthly, that an abandonment once made and accepted is irrevocable by either party without the assent of the other."

The whole discussion of these questions is admirable, the cases are acutely analyzed, and the conclusions vindicated with great force of reasoning.

A peculiar interest attaches to this volume from the fact, that in the year 1825, when it was on the eve of publication, all the manuscript opinions and papers were utterly destroyed in the great fire in Court Street, (Boston,) by which many buildings were consumed. As copies of very few of these opinions had been taken, nearly the whole judicial labors of my father on his circuit during more than three years were utterly destroyed. The loss, at first, seemed irreparable; for not only the judgments themselves, but, in many instances, the briefs of counsel and other important papers were consumed; and the lapse of time, which of necessity had obscured the recollection of facts, arguments, and questions decided in them, rendered the misfortune still more difficult to retrieve. My father was then involved, as we have seen, in manifold labors, but he immediately collected all the papers that remained, and betook himself to the annoying task of reëxamining them and of rewriting all the judgments; and in fact rewrote the whole volume, so that it was reprinted in 1827, although not published until 1828. The vexation, as well as the labor, of such a task will naturally suggest itself. To rewrite any work is laborious and annoying. There is



no spur of novelty. A constant sense of loss accompanies every step. The interest is gone. It is returning over a road which we have trodden with pleasure to find something we have lost. But in this case the labor was enhanced by the nature of the work. The want of sequence in a book of Reports between one case and another, each standing isolated in its own department of law, involving its own facts and interests, and wholly unrelated to those before and after, prevents the mind in warming to its occupation and gaining power from its mere motion and excitement. There is no continuity of thought, no connection of subject, but each case presents a new and distinct field of labor.

The following letter relates to this accident.

TO HON. JEREMIAH MASON.

Salem, December 7th, 1825.

MY DEAR SIR:

I shall be very happy to pay you a visit at Portsmouth, if I can find an opportunity. At present, I can only say, that I shall be engaged "up to my chin" in work until the beginning of January. The business of my circuit comes in by dribblets, and the questions are so complicated and difficult that I have very little leisure even for my private concerns.

In addition to my other labors, I have met with the very serious loss of all my opinions for the last three years, which are to be worked out anew. The volume was to have been put to press on the Monday after the fire. To the public, probably, it is of little consequence, but to myself as a means of saving future labor, the loss is quite serious. A copy of some of my opinions has been preserved, so that from various quarters I shall be able recover a few. I am

now engaged in the difficult task of resuscitating the residue. This I shall be able to do with very pressing labor. In many cases I have my original minutes of the arguments, and cases examined by myself; in others, the first sketches of opinion, in others a tolerably complete copy. In all, I have the benefit of the semi-annual abstracts, which I sent to Judge Washington, and from which I can recover all the points, and often the leading grounds of my decisions. I have already tried my hand at some dozen of cases, and as I flatter myself, have regained all that was lost of them. But of some of my most elaborate opinions I have no sufficient means of recovery. They are probably lost forever. If I do not mistake, you borrowed of me the opinion in the case of Wood against the Stockholders of the Hallowell and Augusta Bank. That opinion is among those lost, and if you took any copy of the whole, or a part, it will be of very great importance to me. Pray, if you have, send me the minutes by mail. . . .

With the highest respect,

Your faithful friend,

JOSEPH STORY.

The "semi-annual abstracts," referred to in this letter, were very short statements of facts and points decided in the principal cases occurring in his circuit, which my father was in the habit of sending to Mr. Justice Washington. The abstract of one case very rarely exceeded in length a written half page. In the greatest part of the cases, these with his minutes of the arguments of counsel, were all the material that remained, out of which to reconstruct his judgments.

During the session of 1828, my father was accompanied to Washington by my mother. This fact will explain some portions of the succeeding letters. It will

be observed by the first letter, that the Royall Professorship of Law at Harvard University was at this time unofficially offered to him, and, after some consideration, declined. This probably was the first movement towards the subsequent project of Mr. Dane, founding the new professorship at Cambridge, to which he was afterwards called.

TO REV. JOHN BRAZER.

Washington, February 9th, 1828.

MY DEAR SIR:

I had the pleasure of receiving from you the other day the Salem Gazette, containing the character of the late Judge Howe. I had previously seen it in the same newspaper, with which Mr. Silsbee was so good as to furnish me, and knew it at once to be your composition. I read it with uncommon interest, both from my high opinion of the man, and my consciousness of the truth, ability, and elegance, with which his character was drawn. I rejoice that the tribute has come from you as a voluntary homage to departed merit. At the same time, I am filled with melancholy at the loss of such a man, whom we could so ill afford to lose, as a lawyer and a Christian. The happiest part of your sketch is that which brings out in strong relief this part of his character. . . .

For myself, my time and thoughts are so completely occupied by the business of the Court, that I hardly find time to think on other subjects. I am at this moment a good deal perplexed by an application to me to accept the Royall Professorship of Law at Harvard University, and to remove to Cambridge, and devote my leisure to the advancement of the Law School there. The offer is made unofficially, but in terms of considerable earnestness, and in a pecuniary point of view it is eligible. What to do puzzles me exceedingly, and



unfortunately it is precisely the sort of personal case in which the judgments of one's friends can be of little assistance. What to decide I hardly know, there are so many *pros* and *contras*. . . .

I have not time to write more, being (what is an old fault of mine) in a hurry. Mrs. Story desires to be most kindly remembered to Mrs. Brazer, in which desire I join, and beg you to believe me,

Very affectionately,

Your friend,

JOSEPH STORY.

TO REV. JOHN BRAZER.

Washington, March 1st, 1828.

MY DEAR SIR :

. . . . I have made up my mind to decline the acceptance of the Royall Professorship. It would require my removal to Cambridge, and such an increase of duties as at my age, and with my present labors, I fear might seriously interfere with my health. On some accounts it would have been desirable. . . .

For a few Sundays past, the Rev. Mr. Green has been preaching in the Unitarian Church here. I have sometimes heard him, but the Sundays have been so drenching and rainy, that he must have had but few hearers. I believe we have not had more than two fair Sundays since I came to this city. There is no spot in the Union where a very able Unitarian minister is more wanted than here. I think such a man would soon gather an excellent congregation. But the position requires tact as well as talent, and elevated and fervent piety. It is of very great consequence to bring such a man here with a view to larger operations; and our Cambridge friends ought to consider that it is not sufficient to fill the office, but to fill it so well as to command reverence, and attract the busy and the gay, the contemplative and the

learned. I repeat it, a young man of suitable ambition and talents ought not to desire a fairer or freer field. . . .

Very truly and respectfully, your obliged friend,

JOSEPH STORY.

Though the feelings of my father towards the South were of the most friendly character, and his views were limited by no narrow sectarianism, yet in principles and in heart he was a Northern man, interested in the advancement, and jealous of the independence of the North. Any act of subserviency by New England, any indication of a willingness on her part to sacrifice her principles to the attainment of a political or pecuniary advantage, or any want of self-respect, excited his indignation. Proud of her history and character, he blushed to see her cowering before the authoritative dictation of the South. He wished her to be steadfast to her principles, fearless in the expression of her views, and firm in maintaining them. The spirit and determination of the Southern States, their open avowals of opinion, and their bold advocacy of their interests, commanded his respect, and he desired to see, in his own section of the country, the same manliness and decision of character. His indignation at the course of Massachusetts breaks out in the following letter.

TO MR. PROFESSOR TICKNOR.

Washington, February 2d, 1828.

MY DEAR SIR :

The newspapers will put you in possession of the debates in Congress; and for the most part they have been a sad mispence (I make the word for I do not find it) of time, and in bad taste. The subjects have been just such as an Ameri-



can of lofty principles and morals cannot but feel to be unfit for grave debate. There is a *quantum sufficit* of general talent in both Houses; but in the House especially, narrow views, or party objects absorb all the interest.

I feel, too, no inconsiderable disgust, not to use a harsher phrase, at the conduct of our countrymen at home. The inexcusable surrender of Boston at the feet of the South, begging protection and assistance from its enemies, has covered us all with humiliation. Let no man be surprised at the private sarcasms or the public taunts, that New England is always ready to bow, when she can gain any selfish object; that her private interests outweigh all her patriotism and pride of character; that she has little credit for generous feelings, and less for unbending principles. If we recoil from such imputations, we are told to look at facts; and see our own great men abandoned, not after they betray, but when they glorify us.

Upon the retrenchment resolution Mr. Everett has made a speech, which is thought by all who heard it to be a good one. Our New England friends think it very well done. Mr. Randolph replied to him with a good deal of tartness, but I am told his javelin was harmless. Mr. Sargeant, yesterday, gave a very sound and gentlemanly speech, which sustained his former character.

There is no chance of Congress rising until May or June. The tariff will not come up under three or four weeks, and then there will be battles fought, and war daily for a month or two, and skirmishes of all sorts. Depend upon it, whatever will be the present cross currents of debate, the question must finally come to the sheer point, whether the South shall govern the East, now and forever. Your fireside politicians may dream that things ought to be otherwise, and that New England is and will be respected, whether she wakes or sleeps; but there is no faith in prophecy, if she does not find to her cost, that she must stand forth in the manliness of her united strength, or she will fall.



On looking back, I find that I am speculating like a politician more than beseems me, and more than I permit myself to do in general. You may therefore set your heart at rest, when I add, that I am not beginning to embark anew in political strifes.

I am, most truly and affectionately, your friend,  
JOSEPH STORY.

TO MR. PROFESSOR TICKNOR.

Washington, March 6th, 1828.

MY DEAR SIR:

I thank you for all the good things in your good letter, which I received to-day. . . .

The very first day of Mr. Webster's arrival and taking his seat in the Senate, there was a process bill on its third reading, filled, as he thought, with inconvenient and mischievous provisions. He made, in a modest undertone, some inquiries, and upon an answer being given, he expressed in a few words his doubts and fears. Immediately Mr. Tazewell, from Virginia, broke out upon him in a speech of two hours. Mr. Webster then moved an adjournment, and on the next day delivered a most masterly speech in reply, expounding the whole operation of the intended act in the clearest manner, so that a recommitment was carried almost without an effort. It was a triumph of the most gratifying nature, and taught his opponents the danger of provoking a trial of his strength, even when he was overwhelmed by calamity. In the labors of the court he has found it difficult to work himself up to high efforts; but occasionally he comes out with all his powers, and when he does, it is sure to attract a brilliant audience.

I have considerable curiosity to dip into Burke's Correspondence, though probably the time is not yet arrived, in which the best can safely be published. I take French Lawrence to have been one of the ablest admiralty lawyers of his day.

After a good deal of hesitation, I have come to the conclusion not to go to Cambridge. I have fears that my health would not hold out against the inroads of such additional labors. If I were there, I should be obliged to devote *all* my leisure time to drilling, and lectures, and judicial conversations. The school cannot flourish except by such constant efforts; and I should not willingly see it wither under my hands. The delivery of public lectures alone might not be oppressive; but success in a law school must be obtained by private lectures. I have yielded reluctantly to what seems to me, on the whole, the dictates of duty. . . .

Good-bye. Believe me, very truly and respectfully,  
Your most obliged friend,  
JOSEPH STORY.

The next letter fairly states the ground he always took in political movements.

TO HON. EZEKIEL BACON.

Salem, August 3d, 1828.

MY DEAR SIR:

And now my dear sir, one word as respects myself. When I came upon the Bench, I thought it my duty to abstain from being engaged as an active partisan in politics. I have never deviated from that course at any time since that period, and every day of my life has more and more confirmed me in my resolution. I need not state to you the reasons for my course; they will at once present themselves to your mind. I do not mean to say that I have disfranchised myself. I express freely my opinions on men and things, as a private citizen, and am least of all entitled to the appellation of being indifferent to the weal or woe of my country; but I have separated myself from all political meetings and associations for political purposes.

It has cost me much forbearance to refrain from engaging in the struggle now going on in the Union, because I think it momentous, both in principles and consequences. I am sincerely anxious for the reelection of Mr. Adams, because his purity and intelligence and public talents and public virtue deserve it; and I should be ashamed to affect any neutrality on the occasion. But it is one thing to hold a private opinion on the subject, and quite another to avail myself of my judicial station, or of other means of influence, to affect the opinions of others. Were I now in political life, I should be ready to devote all my powers to such an honorable purpose. I rejoice, indeed, to find that, through so many years of separation, you and I have continued to go on so closely in the same path, for our country and its principles. It confirms me in the correctness of my political views, and adds confidence to my hopes for the nation.

Pray give Mrs. Story's and my best regards to your wife and family, and believe me as ever, with the highest respect and esteem,

Your obliged friend,

JOSEPH STORY.

Yet, though my father would never join in political action, he took the liveliest interest in public measures and public men. He was eager for information on all the topics of the day. Newspapers he read with unsatiable hunger, and was never quite happy without them. Every morning after breakfast he devoted an hour to them; all the little items of news he read; all the cabals and intrigues of party he watched; the very details of local politics and occurrences interested him. I really think no present was ever more grateful to him than a newspaper. His friends used to jest with him sometimes about this, and I well remember his telling us, that on



one occasion, when he was travelling with Mr. Webster, and was eagerly inquiring for papers at a little tavern on the road, where to his great disappointment there were none to be had, Mr. Webster said to the landlord, "Come, my friend, if you have not a whole newspaper here, any little old bit or scrap of one will do. You must find something for the Judge, no matter how old or small."

The arrival of the English newspapers was to him a feast. He took almost as lively an interest in the politics of England, as of America, and was as well versed in them. With what eagerness did he watch the coming of the English steamers, as the days when they were due came round — restless from the moment they arrived, until *The Spectator*, *The Examiner*, *The Athenæum*, *The Times*, *The Daily News*, were in his hands. Surrounded by these, seated on his sofa, or in the summer beneath the portico, (or piazza, as the Americans call it,) how immersed he was in their intelligence. For the time he was on the soil and in the life of England, and at such moments it was in the heart of no one to interrupt him.

Yet, with all this interest in politics, he never participated in any political meeting, nor would accept an invitation to any festival or dinner given to celebrate party triumphs, or for party purposes. His whole political action consisted in giving his vote, which he was always scrupulous to do in rain or sunshine. He was also careful in affording opportunities for the servants of his household to vote, and conscientiously refrained from imposing any duty which could interfere with the exercise of this right; so scrupulous, indeed, was he on this

point, that he never would inquire into their political opinions, lest he might thereby exercise an influence over them. And it has sometimes happened, to our great amusement, that his own vote has been utterly negatived by the vote of his coachman who drove him to the polls.

After the formation of the Whig and Democratic parties, he voted with the former. And in speaking of his Republicanism, he used to say, "I seem to myself simply to have stood still in my political belief, while parties have revolved about me; so that, although of the same opinions now as ever, I find my name has changed from Democrat to Whig, but I know not how or why.

The next letter relates to the death of Judge Peters, of the District Court of Pennsylvania, who was as remarkable for his wit and powers of repartee, as for his legal acuteness.

TO RICHARD PETERS, ESQ.

Salem, August 30th, 1828.

MY DEAR SIR:

I sincerely sympathize with you in the death of your venerable father. The measure of his days and his virtues was indeed full, and as the infirmities of life were beginning to fall upon him, it is natural that all of his friends should feel resigned to what was inevitable, and must in the ordinary course of nature happen soon. The close of his life was most enviably calm and soothing. His reputation now belongs to his children and his country, and it is not too much to say, that it is a high and brilliant fame, founded in solid learning, and strengthened by wisdom and integrity. I have learned much in his school, and owe him many thanks for his rich contributions to the maritime jurisprudence of our country.



I shall always hold his memory in most grateful remembrance. . . .

In great haste, I am, with the truest respect,

Your obliged friend,

JOSEPH STORY.

During this year (1828) Mr. Justice Trimble, who had been appointed to the Supreme Court in 1826, to supply the vacancy caused by the death of Mr. Justice Todd, died. During the short period of his judicial life, a warm attachment had grown up between him and my father. The following sketch of his character was drawn up by my father, and published in the Boston Columbian Centinel, September 17th, 1828. It was written, when his time was not only crowded by judicial business, but while he was specially devoted to the preparation of a literary discourse. Nothing, however, ever interfered with him to prevent the claims of friendship.

"The melancholy rumor of the death of Mr. Justice Trimble, of the Supreme Court of the United States, has at length been confirmed. That excellent man is no more. The nation has sustained a loss of no ordinary magnitude; and Kentucky may now mourn over the departure of another of her brightest ornaments, in the vigor of life and usefulness. It is but a few years since, that Hardin, who deservedly held the foremost rank at her Bar, fell an early victim to disease. The death of that worthy and discriminating Judge, Mr. Justice Todd, soon followed; and now Trimble is added, to complete the sad triumvirate. It is but two years since the latter took his seat on the bench of the Supreme Court, having been elevated to that station, from the District Court, solely by his uncommon merits. It is not saying too much to assert, that he brought with him to his new office the repu-



tation of being at the head of the profession of his native state. Men might differ with respect to the rank of other lawyers; but all admitted, that no one was superior to Trimble, in talents, in learning, in acuteness, in sagacity. All admired him for his integrity, firmness, public spirit, and unconquerable industry. All saw in him a patience of investigation, which never failed, a loftiness of principle, which knew no compromise, a glorious love of justice and the law, which overcame all obstacles. His judgments were remarkable for clearness, strength, vigor of reasoning, and exactness of conclusion. Without being eloquent in manner, they had the full effect of the best eloquence. They were persuasive, and often overwhelming, in their influence.

“Such was the reputation, which accompanied him to the Supreme Court. Before such a Bar, as adorns that Court, where some of the ablest men in the Union are constantly found engaged in arguments, it is difficult for any man long to sustain a professional character of distinction, unless he has solid acquirements and talents to sustain it. There is little chance there for superficial learning, or false pretensions, to escape undetected. Neither office, nor influence, nor manners, can there sustain the judicial functions, unless there is a real power to comprehend and illustrate juridical arguments, a deep sense of the value of authority, an untiring zeal, and an ability to expound, with living reasons, the judgments, which the Court is called upon to express. A new Judge, coming there for the first time, may, under such circumstances, well feel some painful anxiety, and some distrustful doubts, lest the Bar should search out and weigh his attainments, with too nice an inquisition. Mr. Justice Trimble not only sustained his former reputation, but rose rapidly in public favor. Perhaps no man ever on the Bench gained so much, in so short a period of his judicial career. He was already looked up to, as among the first Judges in the nation, in all the qualifications of office. Unless we are greatly misinformed, he possessed in an eminent degree the confidence of

his brethren, and was listened to with a constantly increasing respect. And well did he deserve it; for no man could bestow more thought, more caution, more candor, or more research upon any legal investigations, than he did. The judgments, pronounced by him in the Supreme Court, cannot be read without impressing every professional reader with the strength of his mind, and his various resources to illustrate and unravel intricate subjects. Yet we are persuaded, that, if he had lived ten years longer, in the discharge of the same high duties, from the expansibility of his talents, and his steady devotion to jurisprudence, he would have gained a still higher rank; perhaps as high as any of his most ardent friends could have desired. One might say of him, as Cicero said of Lysias, — ‘*Nihil acute inveniri potuit in eis causis, quas scripsit, nihil (ut ita dicam) subdole, nihil versute, quod ille non viderit; nihil subtiliter dici, nihil presse, nihil enucleate, quo fieri possit aliquid limatius.*’

“In private life he was amiable, courteous, frank, and hospitable; warm in his friendships, and a model in his domestic relations.

“In politics, he was a firm and undeviating republican; but respectful and conciliatory to those who differed from him. In constitutional law, he belonged to that school, of which Mr. Chief Justice Marshall (himself a host) is the acknowledged head and expositor. He loved the Union with an unflinching love, and was ready to make any sacrifice to ensure its perpetuity. He was a patriot in the purest sense. He was; — but how vain is it to say what he was! He has gone from us for ever. We have nothing left, but to lament his loss, and to cherish his fame.

“*Salve æternum mihi, maxime Palla,  
Æternumque vale.*”

The 18th day of September, 1828, (my father's forty-ninth birth day,) was the second anniversary of the first



settlement of the Pilgrims in Salem, and he accepted an invitation to deliver a discourse commemorative of the occasion. This discourse was principally devoted to the vindication of the character and conduct of the Puritans, and is one of the most successful of his literary efforts. The spirit in which it is written is admirable, and it throughout displays the open toleration and love of freedom in religious opinion, which distinguished my father. In vindicating the Puritans, he is not blind to their persecution and bigotry, that diseased offspring of heroic virtues — although he recognizes their independence, honesty, zeal, and simplicity.

“After all,” he says, “it is not in the power of the scoffer, or the skeptic; of the parasite, who fawns on courts, or the proselyte, who doats on the infallibility of his own sect; to obscure the real dignity of the character of the Puritans. We may lament their errors; we may regret their prejudices; we may pity their infirmities; we may smile at the stress laid by them on petty observances and trifling forms. We may believe, that their piety was mixed up with too much gloom and severity; that it was sometimes darkened by superstition, and sometimes degraded by fanaticism; that it shut out too much the innocent pleasures of life, and enforced too strictly a discipline, irksome, cheerless, and oppressive; that it was sometimes over rigid, when it might have been indulgent; stern, when it might have been affectionate; pertinacious, when concession would have been just, as well as graceful; and flashing with fiery zeal, when charity demanded moderation, and ensured peace. All this, and much more, may be admitted, — for they were but men, frail, fallible men, — and yet leave behind solid claims upon the reverence and admiration of mankind. Of them it may be said, with as much truth as of any men that have ever lived, that they



acted up to their principles, and followed them out with an unflinching firmness. They displayed, at all times, a downright honesty of heart and purpose. In simplicity of life, in godly sincerity, in temperance, in humility, and in patience, as well as in zeal, they seemed to belong to the apostolical age. Their wisdom, while it looked on this world, reached far beyond it in its aim and objects. They valued earthly pursuits no farther than they were consistent with religion. Amidst the temptations of human grandeur they stood unmoved, unshaken, unseduced. Their scruples of conscience, if they sometimes betrayed them into difficulty, never betrayed them into voluntary sin. They possessed a moral courage, which looked present dangers in the face, as though they were distant or doubtful, seeking no escape, and indulging no terror. When, in defence of their faith, of what they deemed pure and undefiled religion, we see them resign their property, their preferments, their friends, and their homes; when we see them submitting to banishment, and ignominy, and even to death; when we see them in foreign lands, on inhospitable shores, in the midst of sickness and famine, in desolation and disaster, still true to themselves, still confident in God's providence, still submissive to his chastisements, still thankful for his blessings, still ready to exclaim, in the language of Scripture — 'We are troubled on every side, yet not distressed; we are perplexed, but not in despair; persecuted, but not forsaken; cast down, but not destroyed;' when we see such things, where is the man, whose soul does not melt within him at the sight? Where shall examples be sought or found, more full, to point out what Christianity is, and what it ought to accomplish?

"It has been said, that our forefathers were bigoted, intolerant, and persecuting; that while they demanded religious freedom for themselves, they denied it to all others; that in their eyes even error in ceremony or mode of worship was equally reprehensible with error in doctrine; and, if persisted in, deserved the temporal punishments denounced upon he-

resy. Mr. Hume has dwelt with no small complacency upon the fact, that the Puritans 'maintained that they themselves were the only pure Church; that their principles and practices ought to be established by law; and that no others ought to be tolerated.'

"I am not disposed to deny the truth of the charge, or to conceal, or to extenuate the facts. I stand not up here the apologist for persecution, whether it be by Catholic or Protestant, by Puritan or Prelate, by Congregationalist or Covenantanter, by Church or State, by the monarch or the people. Wherever, and by whomsoever, it is promulgated or supported, under whatever disguises, for whatever purposes, at all times, and under all circumstances, it is a gross violation of the rights of conscience, and utterly inconsistent with the spirit of Christianity. I care not whether it goes to life, or property, or office, or reputation, or mere private comfort, it is equally an outrage upon religion and the unalienable rights of man. If there is any right, sacred beyond all others, because it imports everlasting consequences, it is the right to worship God according to the dictates of our own consciences. Whoever attempts to narrow it down in any degree, to limit it by the creed of any sect, to bound the exercise of private judgment, or free inquiry, by the standard of his own faith, be he priest or layman, ruler or subject, dishonors, so far, the profession of Christianity, and wounds it in its vital virtues. The doctrine, on which such attempts are founded, goes to the destruction of all free institutions of government. There is not a truth to be gathered from history, more certain, or more momentous, than this, that civil liberty cannot long be separated from religious liberty without danger, and ultimately without destruction to both. Wherever religious liberty exists, it will, first or last, bring in, and establish political liberty. Wherever it is suppressed, the Church establishment will, first or last, become the engine of despotism; and overthrow, unless it be itself overthrown, every vestige of political right. How it is possible



to imagine, that a religion, breathing the spirit of mercy and benevolence, teaching the forgiveness of injuries, the exercise of charity, and the return of good for evil ; how it is possible, I say, for such a religion to be so perverted, as to breathe the spirit of slaughter and persecution, of discord and vengeance, for differences of opinion, is a most unaccountable and extraordinary moral phenomenon. Still more extraordinary, that it should be the doctrine, not of base and wicked men merely, seeking to cover up their own misdeeds ; but of good men, seeking the way of salvation with uprightness of heart and purpose. It affords a melancholy proof of the infirmity of human judgment ; and teaches a lesson of humility, from which spiritual pride may learn meekness, and spiritual zeal a moderating wisdom.

“ Let us not, then, in examining the deeds of our fathers, shrink from our proper duty to ourselves. Let us not be untrue to the lights of our own days, to the religious privileges, which we enjoy, to those constitutions of government, which proclaim Christian equality to all sects, and deny the power of persecution to all. Our fathers had not arrived at the great truth, that action, not opinion, is the proper object of human legislation ; that religious freedom is the birthright of man ; that governments have no authority to inflict punishment for conscientious differences of opinion ; and that to worship God according to our own belief is not only our privilege, but is our duty, our absolute duty, from which no human tribunal can absolve us. We should be unworthy of our fathers, if we should persist in error, when it is known to us. Their precept, like their example, speaking, as it were, from their sepulchres, is, to follow truth, not as they saw it, but as we see it, fearlessly and faithfully. . . .

“ While, then, we joyfully celebrate this anniversary, let us remember, that our forefathers had their faults, as well as virtues ; that their example is not always a safe pattern for our imitation, but sometimes a beacon of solemn warning. Let us do, not what they did, but what, with our lights and



advantages, they would have done, must have done, from the love of country, and the love of truth. Is there any one, who would now, for a moment, justify the exclusion of every person from political rights and privileges, who is not a Congregationalist of the straitest sect in doctrine and discipline? Is there any one, who would exclude the Episcopalian, the Baptist, the Methodist, the Quaker, or the Universalist, not merely from power and Christian fellowship, but from breathing the same air, and enjoying the same sunshine, and reaping the same harvest, because he walks not in the same faith, and kneels not at the same altar, with himself? Is there any one, who would bring back the by-gone penalties, and goad on tender consciences to hypocrisy or self-destruction? Is there any one, who would light the fagot to burn the innocent? who would stain the temples of God with the blood of martyrdom? who would cut off all the charities of human life, and, in a religious warfare, arm the father against the son, the mother against the daughter, the wife against the husband? who would bind all posterity in the fetters of his own creed, and shipwreck their consciences? If any such there be, whatever badge they may wear, they are enemies to us and our institutions. They would sap the foundations of our civil, as well as religious liberties. They would betray us into worse than Egyptian bondage. Of the doctrines of such men, if any such there be, I would say, with the earnestness of the apostolical exhortation, 'Touch not, taste not, handle not.' If ever there could be a case, in which intolerance would rise almost into the dignity of a virtue, it would be, when its object was to put down intolerance. No — let us cling with a holy zeal to the Bible, and the Bible only, as the religion of Protestants. Let us proclaim, with Milton, that 'neither traditions, nor councils, nor canons of any visible Church, much less edicts of any civil magistrate, or civil session, but the Scripture only, can be the final judge or rule in matters of religion, and *that* only in the conscience of every Christian to himself.' Let us inscribe on the walls of

our dwelling-houses, in our temples, in our halls of legislation, in our courts of justice, the admirable declaration of Queen Mary, the consort of William the Third,—than which a nobler precept of wisdom never fell from uninspired lips—‘It is not in the power of men to believe what they please; and therefore they should not be forced in matters of religion contrary to their persuasions and their consciences.’”

Nor with my father was this a mere theory, the birth of a momentary enthusiasm. Entire freedom of opinion on religious questions he allowed to others, as he claimed it for himself. He was no proselytist, though an earnest believer. His mind ran not in the noisy shallows of sectarianism, but tolerant of all, flowed smoothly and generously towards the ocean of truth.

The glowing tribute he pays in this discourse to the pure and noble character of Lady Arbella Johnson, is interesting in itself, and shows how steadily he seized every opportunity of bearing his testimony to the talents or virtue of woman.

“A death scarcely less regretted, and which followed with a fearful rapidity, was that of a lady of noble birth, elegant accomplishments, and exemplary virtues. I speak of the Lady Arbella Johnson, a daughter of the Earl of Lincoln, who accompanied her husband in the embarkation under Winthrop, and in honor of whom, the admiral ship on that occasion was called by her name. She died in a very short time after her arrival; and lies buried near the neighboring shore. No stone or other memorial indicates the exact place; but tradition has preserved it with a holy reverence. The remembrance of her excellence is yet fresh in all our thoughts; and many a heart still kindles with admiration of her virtues; and many a bosom heaves with sighs at her untimely



end. What, indeed, could be more touching than the fate of such a woman? What example more striking than hers, of uncompromising affection and piety? Born in the lap of ease, and surrounded by affluence; with every prospect which could make hope gay, and fortune desirable; accustomed to the splendors of a court, and the scarcely less splendid hospitalities of her ancestral home; she was yet content to quit what has, not inaptly, been termed 'this paradise of plenty and pleasure,' for 'a wilderness of wants,' and, with a fortitude superior to the delicacies of her rank and sex, to trust herself to an unknown ocean and a distant climate, that she might partake, with her husband, the pure and spiritual worship of God. To the honor, to the eternal honor of her sex, be it said, that in the path of duty no sacrifice is with them too high, or too dear. Nothing is with them impossible, but to shrink from what love, honor, innocence, religion, requires. The voice of pleasure or of power may pass by unheeded; but the voice of affliction never. The chamber of the sick, the pillow of the dying, the vigils of the dead, the altars of religion, never missed the presence or the sympathies of woman. Timid though she be, and so delicate, that the winds of heaven may not too roughly visit her, on such occasions she loses all sense of danger, and assumes a preternatural courage, which knows not, and fears not consequences. Then she displays that undaunted spirit, which neither courts difficulties, nor evades them; that resignation, which utters neither murmur nor regret; and that patience in suffering, which seems victorious even over death itself.

"The Lady Arbella perished in this noble undertaking, of which she seemed the ministering angel; and her death spread universal gloom throughout the colony. Her husband was overwhelmed with grief at the unexpected event, and survived her but a single month. Governor Winthrop has pronounced his eulogy in one short sentence. 'He was a holy man, and wise, and died in sweet peace.' He was



truly the idol of the people; and the spot selected by himself for his own sepulture became consecrated in their eyes; so that many left it as a dying request, that they might be buried by his side. Their request prevailed; and the Chapel Burying-ground in Boston, which contains his remains, became, from that time, appropriated to the repose of the dead. Perhaps the best tribute to this excellent pair is, that time, which, with so unsparing a hand, consigns statesmen and heroes, and even sages to oblivion, has embalmed the memory of their worth, and preserved it among the choicest of New England relics. It can scarcely be forgotten, but with the annals of our country."

The following letter relates to this oration.

TO HON. JUDGE FAY.

Salem, September 10th, 1828.

MY DEAR FRIEND:

After a long struggle I have made up all my affairs with our forefathers, and we are quite good-humored and at our ease. I have abused them reasonably and praised them fairly, and they are contented to settle the account on this footing. Never was a poor devil worse off than myself for domestic aids. Notwithstanding Mrs. Fay's kind recommendation of Mather's *Magnalia*, by way of helping my wife's incredulity in respect to the virtues of our forefathers, I am quite in despair at home. She absolutely disdains Mather, and after looking at him an half hour, pronounces him incorrigibly dull and credulous. What to do I do not know. Can you help me to some materials for enthusiasm?

I remain your loving friend, in haste,

JOSEPH STORY.

The correspondence between my father and Lord

Stowell had been maintained without interruption during the preceding ten years; although, in consequence of the increasing age and infirmities of the latter, it had for some time been carried on by the hand of his daughter, Lady Sidmouth. But some accidental circumstance having occurred to prevent my father during the year 1828, from communicating with him as usual, Lord Stowell recommenced the correspondence by the following letter, which gave rise to an interchange of views in relation to the celebrated case of the *Slave Grace*, (1 Haggard's Reports, 48.)

TO HON. MR. JUSTICE STORY.

London, January 9th, 1828.

MY DEAR SIR:

Not having heard from you in the decline of the year, as was rather your kind and favorable practice in former years, I am afraid that either your own health has suffered, or that you have been misled by the supposition, that mine had suffered in a degree that made such a suspension of correspondence highly seasonable and proper. If the former is the case, I shall most seriously lament it, and should most anxiously hope to receive some proof of your return to health. If the latter, which I think more probably the case, I should certainly think it less to be lamented, because, though from my advanced age, my health may very naturally be conceived to be upon the decline, as it certainly is, yet having now entered upon my eighty-third year, I can assure you that I still retain vigor enough to compose a friendly letter to persons whom I value, and still more to receive such testimonies of friendship from a person who has honored me with so many.

The fact is, I have been, at this late hour of my time, very much engaged in an undertaking perfectly novel to me, and which has occasioned me great trouble and anxiety, and that



was the examination of a new question, namely, — whether the emancipation of a slave, brought to England, insured a complete emancipation to him upon his return to his own country, or whether it only operated as a suspension of slavery in this country, and his original character devolved upon him again, upon his return to his native Island.

This question had never been examined since an end was put to slavery in England, fifty years ago; but the practice has regularly been, that in his return to his country the slave resumed his original character of slave. I had never much attended to the question, having never been judicially called upon so to do, but an Act of Parliament lately passed, and of which I knew nothing, vested this jurisdiction in me. A case of that kind was brought up by appeal from the Vice-Admiralty Court of Antigua, and has occasioned a good deal of attention and noise in England, and the adjudication of it was referred to me by the Secretary of State, Lord Bathurst. It has attracted much attention and observation in this country, and I have had to consider this new question (as it was to me) with very laborious research through the many Acts of Parliament respecting the Slave Trade — Acts not very carefully compiled and digested. There were, in fact, five cases to be determined, and they have cost me a great deal of trouble and anxiety. I have given to the public the result of my inquiries, which has been since published in a pamphlet, which I now enclose to you as the result of my labors upon the subject, and most probably upon every other.

I am sorry to tell you, that our country is in a very unfavorable state with respect to many important circumstances. Our revenue is a failing one, many of our plans of free trade have been very ruinous, our agricultural rents are very low and with difficulty collected, many of our manufactures in considerable decay, many of our ships without employment, and many other circumstances of ruin alarm us. Our yeomanry troops are dismissed, to the great dissatis-



faction of the country gentlemen and to the danger of the safety of the country; our Ministry are quite unsettled and in violent danger of being dislodged from their situations soon after Parliament should meet,—in short, we are all at present in confusion, in danger of wars in indefinite extent, occasioned by very rash projects of our late President, Mr. Canning, whose great and overweening pursuits have certainly occasioned much mischief.

Pray present my best respects to your brother Judge and his family whom I received in England, to your Professor of Law in the University, and the other gentleman to whom I am indebted for some valuable pamphlets, I forget his name, for my memory is now very treacherous and my sight very indifferent, but your kindness and his will supply all defects.

I hope you are more prosperous than we are, at present. We have the new King of Portugal with us, Don Miguel, whose entertainment has thrown our sovereign into a fit of the gout of rather a serious nature.

I am my dear sir,

Yours, very faithfully,

STOWELL.

Not receiving an answer at once, Lord Stowell again wrote in May.

TO HON. JOSEPH STORY.

London, May 17th, 1828.

MY DEAR SIR:

I sent you some time ago a case, which I had determined in the Admiralty upon a reference from the Secretary of State, Lord Bathurst, relating to the condition of slaves. Whether it has reached you or not, I know not, as your station appears to be very much altered, that is, from Massachusetts to Washington. I desire to be understood as not at all deciding the question upon the lawfulness of the slave-trade, upon which I am rather a stern Abolitionist, but

merely this narrow question, whether the Court of King's Bench, in the case of *Sommersett*, meant to declare that our non-execution of the slave code in England was a new suspension of it as respected England, but left it in full operation with respect to the colonies, — which some of our Abolitionists here and some of our Judges there resolutely contend for. My clear opinion is for its limited effect. The execution of the Code laws is suspended in England, as being thought inconsistent with the nature as well as the institutions of this country. So far as it goes, but no farther, it does not at all derogate from the law of the colonies upon the return of the person so far liberated in England, but left exposed to the severity of the law in the colonies, upon the return of the party so partially liberated here; this is the whole of the question which I had occasion to consider, and is a question which has nothing to do with the general legality of the slave trade in the colonies. How the laws in respect of that trade made in England and enforced by our courts of law, the King's Privy Council, and the Court of Chancery, to their utmost extent, can consist with any notion of its entire abolition here, is, in my view of it, an utter impossibility.

I am a friend to abolition generally, but I wish it to be effected with justice to individuals. Our Parliaments have long recognized it and have not only invited, but actually compelled our colonists to adopt it, and how, under such circumstances, it is to be broken up at the sole expense of the colonist, I cannot see consistent with either common reason or common justice; it must be done at the common expense of both countries; and upon that part of the case very great difficulties exist. Our zealots are for leaping over them all, but in that disposition I cannot hold them to be within the wise or the just part of this nation.

I am very much obliged by the favorable testimonies which very eminent persons in your country have given of my labors; they are highly flattering to me, and I will add,



that I have the satisfaction of finding the same sentiments prevail in the various countries of this part of the world ; but being now entered into my eighty-third year, I feel my faculties unable to bear the weight of such a load, and therefore resign it. I wish I had been attentive to the preservation of the many decisions I have given upon various questions of law, which arise both in time of peace and time of war, and which have now wholly escaped me. I have ventured to differ sometimes in the interpretation of the law as given by our Judges, and have incurred censure on that account, as straying from an authority that ought to bind me. I have rather thought, that in the jurisdiction of the Admiralty, I am to look to the real justice of the case, and not to what has been pronounced in a somewhat similar case by the decision of a single Judge of the Common Law. I rather think we are too fond of cases ; when a matter is to be argued, we look immediately for the cases, and by them we are determined more than perhaps by the real justice that belongs to the question ; this may enforce the uniformity of the law, which is certainly a very desirable purpose, but is by no means the first purpose that ought to be considered ; for if the judgment be erroneous, it is but an indifferent exposition of the law. . . .

Our politics are here in a very uncomfortable state, our revenue deficient, our people discontented, and a strong spirit of insubordination prevailing in the country, and the sense of religious obligation very much diminished. Our late minister, Mr. Canning, has not carried with him at his death the general regrets of this country. Many of our most considerate persons had deemed him a more brilliant than useful minister ; that he aimed at being considered a man of wit and humor rather than of solid prudence, and that his oratorical talk often ran away with him, and led himself into scrapes and his country into difficulties. There are many passages in his speeches, which occasion great difficulties, and which could only be removed by the publication of these dis-



courses in a highly different form from that in which they were delivered. His plans were of an extravagant nature, and have entailed upon the country very inordinate expenses. His pretence of assisting Portugal, which required no such assistance, and his combination with France and Russia against our friend the Turk, have plunged us in difficulties from which we know not how to emerge. His extravagant boast of having at his command all the disaffected of Europe by no means recommended him to the good opinion of the sober part of our community. In short, his character was of a very mixed kind, and has not left him in possession of the undivided admiration of his country.

I shall be extremely glad to carry on my correspondence with yourself and other persons in your country, to whom I feel myself highly indebted for great kindnesses and obligation, and whilst my powers of recollection exist, I shall by no means lose a correspondence so pleasing to me; on many accounts, I have great reason to be proud of it, and will not part with that satisfaction whilst I retain that strong and accurate sense which I possess at present. I will beg you to present these my sentiments to the other valued friends which I retain in your country, assuring them of my constant regard so long as my mind is able to retain the sense of the many obligations, which I have had the honor of receiving from them.

I am, my dear sir,

Yours, very faithfully,

STOWELL.

My father's answer was as follows:—

TO RIGHT HON. WILLIAM, LORD STOWELL.

Salem, near Boston, September 22d, 1828.

MY LORD:

I have the honor to acknowledge the receipt of your letters of January and May last, the former of which reached

me in the latter part of spring, and the latter quite recently. I cannot but feel grateful to you for both, since I am aware that I can have no other claims upon you than what arise from your spontaneous kindness. I accept with the utmost pleasure your proffer of a continuance of your correspondence, with which you have thus far favored me. It will be truly gratifying to me. At the same time I beg to say that I shall not wish you to take any trouble on your own part to answer my letters, since age gives you a title to repose so well-earned, and as I earnestly hope, still long to be enjoyed. I shall, with your leave, continue to write you, and send you some American reminiscences from time to time, in the hope, that they may sometimes amuse your leisure hours. Though it will afford me very great satisfaction to hear from you in return, I shall by no means think myself at liberty to ask it, and shall be amply repaid in the belief that my letters may not be wholly without interest to you.

I have read with great attention your judgment in the Slave Case from the Vice-Admiralty Court of Antigua. Upon the fullest consideration, which I have been able to give the subject, I entirely concur in your views. If I had been called upon to pronounce a judgment in a like case, I should certainly have arrived at the same result, though I might not have been able to present the reasons which lead to it in such a striking and convincing manner. It appears to me that the decision is impregnable.

In my native state, (Massachusetts,) the state of slavery is not recognized as legal; and yet, if a slave should come hither, and afterwards return to his own home, we should certainly think that the local law would re-attach upon him, and that his servile character would be reintegrated. I have had occasion to know that your judgment has been extensively read in America, (where questions of this nature are not of unfrequent discussion,) and I never have heard any other opinion but that of approbation of it expressed among the profession of the Law. I cannot but think



that, upon questions of this sort, as well as of general maritime law, it were well if the common lawyers had studied a little more extensively the principles of public and civil Law, and had looked beyond their own municipal jurisprudence. The Court of Admiralty would itself have been much less hardly dealt with, if Common Law Judges had known more of the principles which governed it. And I am free to say that in every case, in which you have been called to review any of the Common Law doctrines on maritime subjects, and have differed from them, I have constantly been persuaded that your judgment was correct. This too, as far as I know, is the general opinion in America; for we are not so strict as our mother country, in our attachment to every thing in the Common Law, and more readily yield to rational expositions, as they stand on more general jurisprudence. In short, we are anxious to build up our commercial law, as much as possible, upon principles absolutely universal in their application to maritime concerns.

Since your retirement from the Court of Admiralty, a retirement which, however justified by the state of your health, was with us a matter of general regret, I have entertained a hope that you may find time to collect your unpublished judgments, and thus secure the entire mass for the benefit of posterity. If you had not already done so much, I should be almost tempted to say that it was a duty you owed to your country, and to the world.

We yet lament that Dr. Dodson has left incomplete the second volume of his Reports; and Sir Christopher Robinson acknowledges that he selected some cases only, when the public would gladly ask for the whole. If the whole were now published, they would find a ready sale in America, where Admiralty Law constitutes an important branch of general study. I wish Dr. Haggard would give us in his next volume a large appendix of them. A work, too, on the modern practice of the Court, is very much wanted.

On this side of the Atlantic we have been looking with



intense anxiety on the state of Europe. The war in Turkey and the extraordinary conduct of Don Miguel, as they may affect the future safety and adjustments of power of the various nations of Christendom, cannot but attract the attention of our statesmen. I confess myself by no means at ease in respect to the future destiny of Turkey. Hitherto she has formed a powerful check to the enormous and increasing dominion of Russia. If the latter should now be successful, and overthrow the Moslem Empire, it is hard to say what boundary could be put to her predominance in Europe. Ever since the time of Peter the Great, her ambition has grown with her military successes, and I am not without fears that she will not find a sufficient counterbalance in the nations of the South of Europe. England has a most difficult part to act, to husband her own resources and to preserve the existing system. The times seem full of peril, and the Duke of Wellington and his coadjutors must be surrounded with embarrassment, in which all their prudence and sagacity will be tasked to the uttermost. Distant as we are, we are compelled to feel, that our own destiny cannot be wholly separated from that of Europe; and in the destiny of our mother country, we feel a filial interest.

Our domestic situation in America is, comparatively speaking, prosperous; our commerce is indeed a good deal pressed. But our agriculture and manufactures are generally flourishing. Our poor list is small, and the facility of peopling our waste regions perpetually draws off our surplus population from the older settlements.

The late tariff, which has produced considerable sensation in England, has greatly divided our country. It is supported by a considerable majority in the Northern, Middle, and Western States, but is violently opposed in the Southern. Unfortunately, it mixed itself up with other political objects in Congress, and was loaded with provisions which few could approve, that it might fall under its burdens. You will hear of many threats of the dissolution of the Union in

of the dissensions on the subject. It is quite true that some of the provisions of the Act may be objectionable; but in America we heed not these violent threats, and are satisfied that such expressions go beyond the ebullitions of the moment; and the tranquillity of the adjacent States generally prevents any temporary excitement from spreading beyond a single territory. For the most part it is a local disease, and begins and ends there. Yet it is painful to witness such dangerous intimations, as they tend to shake in sober minds that confidence in the stability of our institutions, which is so important to the public prosperity as well as tranquillity.

The pending election of President absorbs at this moment a great measure the public attention. Our public men and our newspapers are almost engrossed by the subject. A stranger might imagine from the violent excitements, that any disappointment in the choice of the favorite candidate would lead to the most alarming consequences. At home, we do not entertain any such fears. As soon as the election is passed, things will return to their usual state of tranquillity. We exhibit in this, as in many other respects, the same excitability, and the same sagacity as the electors in our mother country. . . .

I perceive by the terms of your last letter that you suppose I have removed to Washington. I still have my permanent home at Salem, but the annual term of the Supreme Court at Washington detains me there for about three months every winter. . . .

Permit me to renew the expressions of my earnest wishes for the continuance of your health, and of that life which has been so glorious to yourself and your country.

I remain with the highest respect,

Your most obedient servant,

JOSEPH STORY.



The following letters upon various subjects were written at this time, from Washington.

TO MRS. JOSEPH STORY.

Washington, February 25th, 1829.

MY DEAR WIFE:

. . . The Chief Justice and myself attended the Birthnight Ball for a short time. We found President Adams there; but the company, though highly respectable and brilliant in dresses, was small. There was a marked contrast between the fulness of last year and the thinness of the present. Mr. Adams has no more favors to bestow, and he is now passed by with indifference, by all the fair-weather friends. They are all ready to hail the rising sun. Never have I felt so forcibly the emptiness of public honors and public favor; it is too transitory and too conspicuous a glory to justify any ambition to seek it. In our country, political eminence, if it can be obtained without stain, can rarely be held without the most painful sacrifices of feeling, and the silent endurance of the grossest injustice, not to say calumny. I rejoice that I am out of political life; and from my heart I now declare, that no earthly inducement could lead me to accept any station of that sort. The longer I live, the more I am satisfied, that real happiness belongs to private life, and most of all to domestic life. The Chief Justice has done reading, — I must stop, and may God grant us many years of happiness in our own dear home.

Most truly and affectionately,

Your husband,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, March 7th, 1829.

MY DEAR WIFE:

The great day, so long expected with anxiety by all the candidates for office, has passed away with its noise and



tumult and hollow parade. Yesterday was the inauguration of President Jackson. It was a delightful and balmy day, with a clear sunshine and a soft southwest wind. At half past eleven o'clock, he went to the Senate chamber, where the Senate was in session, took his seat in front of the clerk's desk, with the Judges in their robes on his right, and the Foreign Ministers, all dressed in their official and splendid costume, on his left. At twelve, the Senate, with the other parts of the procession went through the Rotunda to the eastern portico, and there, in the presence of an immense multitude, the Chief Justice administered to him his oath of office, and he pronounced his inaugural speech. It was impossible to hear a single word, so vast was the crowd, and so pressing the noisy tumult of voices on every side. The speech was brief and well written, as you will see, dealing in such general terms that it may mean any thing or nothing, as may suit future occasions, with the single exception of the passage relative to reforms, which indicates an intention to remove officers who are obnoxious, and hints in no very measured terms at the past Administration. There could not have been, I should think, less than ten thousand people present, and the city was literally overflowing with strangers.

After this ceremony was over, the President went to the palace to receive company, and there he was visited by immense crowds of all sorts of people, from the highest and most polished down to the most vulgar and gross in the nation. I never saw such a mixture. The reign of King "Mob" seemed triumphant. I was glad to escape from the scene as soon as possible, and to return to my lodgings. The city begins already to unpeople, and in a few days it will be almost deserted. . . .

Believe me, most affectionately,

Your husband,

JOSEPH STORY.

TO WILLIAM FETTYPLACE, ESQ.

Washington, March, 1829.

DEAR BROTHER:

I received your letter of the 2nd instant yesterday, and was gratified to receive any information from home, for there had been a total suspension of it for ten days last past.

You will have read before you receive this, the President's speech. It is thought to be feeble and evasive, except upon the point of reform; and as to that, we all interpret his meaning to be, that there will be general removals. Mr. McLean, (the Postmaster-General,) is appointed a Judge of the Supreme Court. It is a good and satisfactory appointment, but was, in fact, produced by other causes than his fitness, or our advantage. The truth is, that a few days since, he told the new President, that he would not form a part of the new Cabinet, or remain in office, if he was compelled to make removals upon political grounds. The President assented to this course, but the governing ultras were dissatisfied, and after much debate and discussion, Mr. McLean remaining firm to his purpose, they were obliged to remove him from the Cabinet, and to make the matter fair, to appoint him (not much to his will) a Judge. His appointment is ratified by the Senate, and Mr. Barry, of Kentucky, will succeed him. He, it is understood, will reform all abuses, and not stickle about removals. . . . Mr. S., I do not doubt, will be immediately removed from office; and indeed, I am much mistaken if there is not a sweeping system pervading all the departments of Government. . . .

Affectionately, yours,

JOSEPH STORY.

TO MR. PROFESSOR TICKNOR.

Washington, February 11th, 1829.

MY DEAR SIR:

I am much obliged to you for your late letter, and though it contains much interesting material for thought, the knowledge that you have recovered your health was more grateful to me than any thing.

On the whole, the choice of Mr. Quincy goes well (I hear) with the public. It is an evidence of the discernment of good men, and justifies a reliance on their good faith in perilous times. I doubt not he will make an energetic, firm, and honest President, and these, added to his real love of letters, are great qualifications. I take it for granted, that he is a stout reformer. He has my heartiest wishes for every success.

His departure from home on the search for something new, is exactly in character. He wishes to see men and things, and to learn if Rome is as large as Mantua. I add only, that I read his farewell speech with very great pleasure. It is manly, respectful, honest and eloquent. Its simplicity and directness went to my heart.

As yet the external surface here is very quiet. But there are considerable movements below. I think the ground swell will be felt at no great distance of time. The Senate has been in secret session every day for ten days past, and it is understood to be on the subject of the President's nominations. It has been suggested, that there has been a determination on the part of his political opponents to confirm none, which it is possible to avoid, and to give full patronage to the new administration. The doctrine, which is said to prevail, is that this is a repudiated administration. The next will give us the will of the people, and appointments should be according to their wishes, and by their real agents. If General Jackson, on his arrival, should confirm, this doctrine, and give it his full approbation, I know not where the proceeding will stop, until the power of further patronage is exhausted.



The debates in the secret session are said to have been unusually warm and animated. I am told that Mr. Webster, on Monday, made a speech of about two hours long, which was equal, if not superior, to any ever made by him in Congress. I trust that, at a future day, the injunction of secrecy will be taken off, and that we shall know the whole. Our friends here are firm and united; but at present, they augur no good. They fear that there will be no moderation in the exercise of power, and a new reign of proscription will begin.

Most truly, your friend,

JOSEPH STORY.

The allusion, in this last letter, is to the election of Hon. Josiah Quincy, as President of the Harvard University. My father had warmly seconded his nomination, and sent from Washington his casting vote, as a member of the corporation of the University, by which Mr. Quincy was elected. From this time forward, intimate relations of friendship and confidence existed between them, and my father, to his death, ceased not to congratulate himself for an act, which gave to the College so firm, efficient, and able a head, and to himself so highly prized and constant a friend.

The next letter contains a sketch of Mr. Emmet's character.

TO WILLIAM SAMPSON, ESQ.

Washington, February 27th, 1829.

DEAR SIR:

I had the pleasure of receiving your letter yesterday. I should long since have complied with your request in regard to Mr. Emmet, if I could have found suitable leisure to sit down and make even a sketch of him, such as I thought him

to be in character and attainments. Hitherto I have sought such leisure in vain.

It was in the winter of 1815, that I first became acquainted with Mr. Emmet. He was then, for the first time, in attendance upon the Supreme Court at Washington, being engaged in some important prize causes, then pending in the Court. Although, at that period, he could have been but little, if any, turned of fifty years of age, the deep lines of care were marked upon his face; the sad remembrances, as I should conjecture, of past sufferings, and of those anxieties, which wear themselves into the heart, and corrode the very elements of life. There was an air of subdued thoughtfulness about him, that read to me the lessons of other interests than those, which belonged to mere professional life. He was cheerful, but rarely, if ever, gay; frank and courteous, but he soon relapsed into gravity, when not excited by the conversation of others.

Such, I remember, were my early impressions; and his high professional character, as well as some passages in his life, gave me a strong interest in all that concerned him, at that time. There were, too, some accidental circumstances, connected with his arguments on that occasion, which left a vivid impression upon all, who had the pleasure of hearing him. It was at this time, that Mr. Pinkney, of Baltimore, one of the proudest names in the annals of the American Bar, was in the meridian of his glory. He had been often tried in the combats of the forum of the nation; and, if he did not stand quite alone, the undisputed victor of the field, (and it might be deemed invidious for me to point out any one, as *primus inter pares*,) he was, nevertheless, admitted by the general voice not to be surpassed by any of the noble minds, with whom he was accustomed to wrestle in forensic contests. Mr. Emmet was a new and untried opponent, and brought with him the ample honors, gained at one of the most distinguished Bars in the Union. In the only causes, in which Mr. Emmet was engaged, Mr. Pinkney was retained on the other side; and each of these causes was



full of important matter, bearing upon the public policy and prize law of the country. Curiosity was awakened; their mutual friends waited for the struggle with impatient eagerness; and a generous rivalry, roused by the public expectations, imparted itself to their own bosoms. A large and truly intelligent audience was present at the argument of the first cause. It was not one, which gave much scope to Mr. Emmet's peculiar powers. The topic was one, with which he was not very familiar. He was new to the scene, and somewhat embarrassed by its novelty. His argument was clear and forcible; but he was conscious, that it was not one of his happiest efforts. On the other hand, his rival was perfectly familiar with the whole range of prize law; he was at home, both in the topic and the scene. He won an easy victory, and pressed his advantages with vast dexterity, and, as Mr. Emmet thought, with somewhat of the display of triumph.

The case of the *Nereide*, so well known in our prize history, was soon afterwards called on for trial. In this second effort, Mr. Emmet was far more successful. His speech was greatly admired for its force and fervor, its variety of research, and its touching eloquence. It placed him at once, by universal consent, in the first rank of American advocates. I do not mean to intimate, that it placed him before Mr. Pinkney, who was again his noble rival for victory. But it settled, henceforth and forever, his claims to very high distinction in the profession. In the course of the exordium of this speech, he took occasion to mention the embarrassment of his own situation, the novelty of the forum, and the public expectations, which accompanied the cause. He spoke with generous praise of the talents and acquirements of his opponent, whom fame and fortune had followed both in Europe and America. And then, in the most delicate and affecting manner, he alluded to the events of his own life, in which misfortune and sorrow had left many deep traces of their ravages. "My ambition," said he, "was extinguished in my



youth ; and I am admonished, by the premature advances of age, not now to attempt the dangerous paths of fame." At the moment when he spoke, the recollections of his sufferings melted the hearts of the audience, and many of them were dissolved in tears. Let me add, that the argument of Mr. Pinkney, also, was a most splendid effort, and fully sustained his reputation.

From that period, I was accustomed to hear Mr. Emmet at the Bar of the Supreme Court, in almost every variety of causes ; and my respect for his talents constantly increased until the close of his life. I take pleasure in adding, that his affability, his modest and unassuming manner, his warm feelings, and his private virtues, gave a charm to his character, which made it at once my study and delight.

It would ill become me to attempt a sketch of the character of Mr. Emmet. That is the privilege, and will be (as it ought) the melancholy pleasure of those who were familiar with him in every walk of life, to whom he unbosomed himself in the freedom of intimacy, and who have caught the light plays of his fancy, as well as the more profound workings of his soul.

That he had great qualities as an orator, cannot be doubted by any one who has heard him. His mind possessed a good deal of the fervor, which characterizes his countrymen. It was quick, vigorous, searching, and buoyant. He kindled as he spoke. There was a spontaneous combustion, as it were, not sparkling, but clear and glowing. His rhetoric was never florid ; and his diction, though select and pure, seemed the common dress of his thoughts, as they arose, rather than any studied effort at ornament. Without being deficient in imagination, he seldom drew upon it for resources to aid the effect of his arguments, or to illustrate his thoughts. His object seemed to be, not to excite wonder or surprise, to captivate by bright pictures and varied images and graceful groups and startling apparitions ; but by earnest and close reasoning to convince the judgment, or to overwhelm the

heart by awakening its most profound emotions. His own feelings were warm and easily touched. His sensibility was keen, and refined itself almost into a melting tenderness. His knowledge of the human heart was various and exact. He was easily captivated by the belief, that his own cause was just. Hence, his eloquence was most striking for its persuasiveness. He said what he felt; and he felt what he said. His command over the passions of others was an instantaneous and sympathetic action. The tones of his voice, when he touched on topics calling for deep feeling, were themselves instinct with meaning. They were utterances of the soul, as well as of the lips.

Yours, affectionately,

JOSEPH STORY.

In addition to the labor of these years, my father found time to re-edit, in 1829, the edition of Abbott on Shipping, which he had previously prepared, and to enrich it with a large addition of notes.

The following extract from a letter from Sir Charles Vaughan, for many years the representative of the Court of St. James, at Washington, will not be without interest, as showing the opinion entertained by Mr. Justice Vaughan of the value of this edition of Abbott on Shipping:

Washington, June 22d, 1824.

MY DEAR SIR:

I am induced to write to you, because you are mentioned in a letter which I received lately from my brother, the Judge. He says, "when you see Mr. Justice Story, present my most respectful compliments to him. It was a subject of regret with me, that I left the Court of Exchequer, only a few days before I should have delivered a judgment, in which I had prepared myself to do justice to his most excellent edition of



Lord Tenderden's book on Shipping, in which he has discussed and commented on many great and grave questions of maritime law, with a degree of intellectual acuteness, deep research, and knowledge, which must forever establish his character, as a consummate lawyer."

I cannot deny myself the pleasure of showing you how you are appreciated by our lawyers. . . .

Believe me, my dear sir, ever

Most faithfully and truly, yours,

CHARLES B. VAUGHAN.

I now approach a period when my father's life diverged into a new channel. And before tracing this, it may be well to give a hasty glance at the backward track, so as rightly to estimate his position. Thus far his judicial life had been uninterrupted. It had been a busy, earnest career, devoted principally to the duties of his office, with such occasional explorations into literature as occasion demanded or leisure permitted. There had been no striking excitements or startling occurrences to break its even tenor, and the results of his labors are to be seen in his recorded judgments and his literary writings. It had been equable, earnest, laborious. He had stamped his mark upon many different departments of the law. His Constitutional Judgments had placed him beside Marshall. The Patent Law had been laid out and systematized. In Commercial Law he had won enviable distinction, and in Prize Law he stood almost alone. In every branch he had achieved success, and been rewarded at home and abroad by an honorable fame.

But fame was not all that he had won. His bland and generous manners, free from the frostiness of indifference and the harshness of arrogance, — dignified, yet



free and luxuriant, had endeared him to the hearts of those who practised before him. He was surrounded by a troop of loving and honoring friends. His Court was filled with a genial atmosphere, and all of the Bar were *amici curiæ*. Almost it seemed as if

"No room was left for hope or fear,  
Of more or less ; so high, so great  
His growth was, yet so safe his seat.  
Safe in the circle of his friends ;  
Safe in his loyal heart and ends ;  
Safe in his native, valiant spirit ;  
By favor safe, and safe by merit ;  
Safe by the stamp of nature, which  
Did strength, with shape and grace enrich ;  
Safe in the cheerful courtesies  
Of flowing gestures, speech and eyes."

His home also was happy. Death had not for years entered the household, and he had three children growing up around him. In simple fireside pleasures he tasted a pure and fresh delight. In all the games of his children, he joined with eager joy, and that domestic happiness which had haunted his young hopes, was now realized. In the social circle of friends and relations, which gathered round his hearth at evening, he indulged his warm and sympathetic feelings, and joined in the common interests of the day. His mother's family at this time composed a little settlement, and there were six or seven houses within a stone's throw of each other, inhabited by his kindred. The daily intercourse and familiar communion of their different inmates, enlivened and cheered his thoughts; and there among them, laying aside all formalities, and claiming no superiority, he moved as simple, natural and unconscious of his eminence as a

child. The only interruption to this domestic happiness was his annual visit to Washington, which drew him from his home for the three winter months. Yet from them came advantage to his health; and on his annual return he brought back a large budget of remembrances, which he opened to a delighted auditory. Never in the least secretive, he then poured forth his knowledge of men and things; painted pictures of the busy world of politics; recounted the sharp skirmish of debate and the pitched battles of argument on the floor of Congress and at the Bar of the Court; sketched the social life of the group of Judges; the bustling gayety of the President's levees; the pleasant converse at the dinners of the foreign Ministers, praising as he spoke with a boundless generosity, and using all men better than their desert, and "after his own honor and dignity."

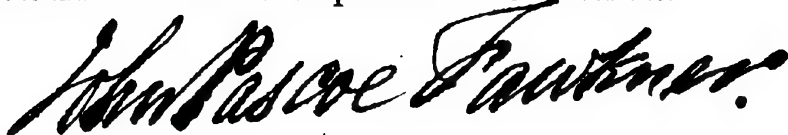
Captain Basil Hall, in his interesting work describing his travels in America during the years 1827-28, alludes to my father in the following passage:—

"We reached the town of Salem in good time for dinner; and here I feel half tempted to break through my rule, in order to give some account of our dinner party; chiefly, indeed, that I might have an opportunity of expatiating—which I could do with perfect truth and great pleasure—on the conversation of our excellent host. For I have rarely, in any country, met a man so devoid of prejudice, or so willing to take all matters on their favorable side; and withal, who was so well informed about every thing in his own and in other countries, or who was more ready to impart his knowledge to others.

"To these agreeable attributes and conversational powers, he adds such a mirthfulness of fancy and genuine heartiness

of good humor to all men, women and children who have the good fortune to make his acquaintance, that I should have no scruple — if it were not too great a liberty — in naming him as the person I have been most pleased with in all my recent travels."

In the year 1829, my father was called to a new sphere of usefulness and duties. This change constituted an era in his life, removed him from Salem to Cambridge, and invested him with a Law Professorship at Harvard University. The circumstances relating to this will form the matter of the first chapter of the second volume.

A large, elegant handwritten signature in black ink, reading "John P. Faneuil". The script is fluid and cursive, with a prominent initial 'J' and a long, sweeping underline.



LONDON, 142, STRAND,  
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